

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4
5 By: Senator B. Johnson

A Bill

SENATE BILL 600

For An Act To Be Entitled

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

Subtitle

15 TO ESTABLISH THE DRUG SCREENING AND
16 TESTING ACT OF 2015.

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

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

23 Subchapter 7 – Drug Screening and Testing Act of 2015

25 20-76-701. Title.

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

29 20-76-702. Definitions.

30 As used in this subchapter:

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

33 (A) A parent or stepparent;

34 (B) A grandparent;

35 (C) A sibling, half-sibling, or stepsibling;

36 (D) An aunt or uncle of any degree;



1 (E) A first cousin, nephew, or niece; and

2 (F) A relative by adoption within the previously named
3 classes;

4 (2) "Chain of custody" means the methodology of tracking
5 specified materials or substances for the purpose of maintaining control and
6 accountability from initial collection to final disposition for all materials
7 or substances, providing accountability at each stage in handling, testing,
8 storing specimens, and reporting test results;

9 (3) "Confirmation test" means a second analytical procedure used
10 to identify the presence of a specific drug or drug metabolite in a specimen,
11 which test may be different in scientific principle from that of the initial
12 test procedure and must be capable of providing requisite specificity,
13 sensitivity, and quantitative accuracy;

14 (4)(A) "Drug" means marijuana, cocaine, methamphetamine,
15 amphetamine, and opiates, including without limitation morphine.

16 (B) The Director of the Department of Workforce Services
17 may add additional drugs by rule;

18 (5) "Drug test" means any chemical, biological, or physical
19 instrumental analysis administered by a drug testing agency authorized to
20 test under this subchapter for the purpose of determining the presence or
21 absence of a drug or its metabolites;

22 (6) "Drug testing agency" means an entity that has the required
23 credentials as established by the Department of Workforce Services to
24 administer drug tests using a person's urine, blood, or DNA that will detect
25 and validate the presence of drugs in a person's body;

26 (7) "Drug treatment program" means a service provider that
27 provides confidential, timely, and expert identification, assessment, and
28 resolution of drug or alcohol abuse problems affecting a person;

29 (8) "Five-panel drug test" means a test for marijuana, cocaine,
30 methamphetamine, amphetamine, and opiates, including without limitation
31 morphine;

32 (9) "Initial drug test" means a procedure that qualifies as a
33 screening test or initial test as implemented by the department;

34 (10) "Protective payee" means a caretaker relative or legal
35 guardian of a minor child unless the caretaker relative who is an applicant
36 for Temporary Assistance for Needy Families Program benefits receives a

1 positive result on a drug test; and

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

4
5 20-76-703. Administration.

6 (a)(1) Subject to state appropriation, the Department of Workforce
7 Services shall establish and administer a two-year pilot program of
8 suspicion-based drug screening and testing for each applicant who is
9 otherwise eligible for Temporary Assistance for Needy Families Program, § 20-
10 76-101 et seq., or its successor program and for each recipient of the
11 Temporary Assistance for Needy Families Program, § 20-76-101 et seq., or its
12 successor program.

13 (2) The pilot program shall include at minimum of ten percent
14 (10%) of the program population statewide to be determined by the department,
15 and all applicants and all recipients in the counties bordering the following
16 states:

17 (A) Mississippi;

18 (B) Missouri;

19 (C) Oklahoma;

20 (D) Tennessee; and

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

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

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

33 (c)(1) An applicant or recipient may inform the drug testing agency
34 administering the test of any prescription or over-the-counter medication
35 that the individual is taking.

36 (2) An applicant or recipient shall not be denied Temporary

1 Assistance for Needy Families Program benefits on the basis of failing a drug
2 test if the applicant has a current and valid prescription for the drug in
3 question.

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

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

10
11 20-76-704. Powers and duties.

12 (a) The Department of Workforce Services shall:

13 (1) Consult with substance abuse treatment experts;

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

18 (3) Identify and select a screening tool such as the Substance
19 Abuse Subtle Screening Inventory or other screening techniques as part of the
20 development of the screening technique that will be employed for the pilot
21 program under this subchapter;

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

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

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

35 (1) The number of individuals screened;

36 (2) The number of screened individuals for whom there was a

1 reasonable suspicion of illegal drug use;

2 (3) The number of screened individuals who consented to take a
3 drug test;

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

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

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

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

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

14
15 20-76-705. Standards in the drug screening and testing pilot program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ineligibility due to positive results on a drug test.

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

4
5 20-76-706. Information regarding drug testing.

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

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

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

17 (c) This subchapter does not prohibit:

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

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

26
27 20-76-707. Positive drug test result not a disability.

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

31
32 20-76-708. Rule-making authority.

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

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

36 (1) Testing procedures established by the United States

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

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

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

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

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

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

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

17
18 20-76-709. Effective date.

19 This subchapter shall be in effect until June 30, 2017, unless amended
20 or extended by the General Assembly.

21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36