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4

As Engrossed: S3/12/15

A Bill

SENATE BILL 600

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

For An Act To Be Entitled

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

Subtitle

18 TO ESTABLISH THE DRUG SCREENING AND
19 TESTING ACT OF 2015.
20

21
22
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

24
25 SECTION 1. Arkansas Code Title 20, Chapter 76, is amended to add an
26 additional subchapter to read as follows:

27 Subchapter 7 – Drug Screening and Testing Act of 2015

28
29 20-76-701. Title.

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

32
33 20-76-702. Definitions.

34 As used in this subchapter:

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



1 (A) A parent or stepparent;
2 (B) A grandparent;
3 (C) A sibling, half-sibling, or stepsibling;
4 (D) An aunt or uncle of any degree;
5 (E) A first cousin, nephew, or niece; and
6 (F) A relative by adoption within the previously named
7 classes;

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

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

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

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

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

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

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

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

36 (9) "Initial drug test" means a procedure that qualifies as a

1 screening test or initial test as implemented by the department;

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

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

8
9 20-76-703. Administration.

10 (a)(1) Subject to state appropriation, the Department of Workforce
11 Services shall establish and administer a two-year pilot program of
12 suspicion-based drug screening and testing for each applicant who is
13 otherwise eligible for Temporary Assistance for Needy Families Program, § 20-
14 76-101 et seq., or its successor program and for each recipient of the
15 Temporary Assistance for Needy Families Program, § 20-76-101 et seq., or its
16 successor program.

17 (2) The pilot program shall include at minimum of ten percent
18 (10%) of the program population statewide to be determined by the department,
19 and all applicants and all recipients in the counties bordering the following
20 states:

21 (A) Mississippi;

22 (B) Missouri;

23 (C) Oklahoma;

24 (D) Tennessee; and

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

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

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

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

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

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

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

14
15 20-76-704. Powers and duties.

16 (a) The Department of Workforce Services shall:

17 (1) Consult with substance abuse treatment experts;

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

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

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

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

35 (b) Upon conclusion of the first year of the pilot program and
36 conclusion of the pilot program, the department shall submit a report on or

1 before December 31 to the General Assembly that includes without limitation:

2 (1) The number of individuals screened;

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

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

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

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

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

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

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

17
18 20-76-705. Standards in the drug screening and testing pilot program.

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

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

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

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

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

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

1 (B) If an applicant or recipient receives a positive
2 result on a drug test, refuses to enter a treatment plan, and receives a
3 negative result on a drug test upon reapplying for benefits after six (6)
4 months, the cost of administering the first drug test shall be deducted from
5 his or her first program benefits, and the cost of administering the second
6 drug test shall be paid by the department;

7 (C) If an applicant 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; and

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

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

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

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

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

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

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

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

1 treatment resource for drug abuse treatment or other resource; and

2 (6)(A) A requirement that a dependent child's eligibility for
3 program benefits shall not be affected by a caretaker relative's
4 ineligibility due to positive results on a drug test.

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

7
8 20-76-706. Information regarding drug testing.

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

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

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

20 (c) This subchapter does not prohibit:

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

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

29
30 20-76-707. Positive drug test result not a disability.

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

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35 20-76-708. Rule-making authority.

36 (a) The Director of the Department of Workforce Services shall

1 promulgate rules necessary for the implementation of this subchapter.

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

3 (1) Testing procedures established by the United States
4 Department of Health and Human Services and the United States Department of
5 Transportation;

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

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

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

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

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

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

20
21 20-76-709. Effective date.

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

25
26 */s/B. Johnson*
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