

HOUSE BILL NO. 1308

Introduced by

Representatives Johnston, Rick C. Becker, Grueneich, Kiefert, Klemin, B. Koppelman, Lefor,
Louser, Olson

Senators Campbell, Laffen, Roers

1 A BILL ~~for an Act to create and enact a new chapter to title 50 of the North Dakota Century~~
2 ~~Code, relating to drug testing for temporary assistance to needy families program benefits.~~for
3 an Act to amend and reenact subsection 1 of section 50-09-29 of the North Dakota Century
4 Code, relating to mandatory addiction screening for temporary assistance for needy families
5 program individual employment plan participants; and to provide an effective date.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 ~~SECTION 1. A new chapter to title 50 of the North Dakota Century Code is created and~~
8 ~~enacted as follows:~~

9 ~~Definitions.~~

10 ~~As used in this chapter, unless the context otherwise requires:~~

11 ~~1. "Benefits" means benefits received under the temporary assistance to needy families~~
12 ~~program.~~

13 ~~2. "Caretaker relative" means one or more of the following individuals with whom a child~~
14 ~~is living: the father, mother, grandfather or grandmother of any degree, brother or~~
15 ~~sister of the whole or half blood, stepfather, stepmother, stepbrother, stepsister, aunt~~
16 ~~or uncle of any degree, first cousin, and nephew or niece; the relatives by adoption~~
17 ~~within the previously named classes of persons; the biological relatives within the~~
18 ~~previous degrees of relationship; and a legal spouse of an individual within the~~
19 ~~previously named classes of individuals, even if the marriage has been terminated by~~
20 ~~death or divorce.~~

21 ~~3. "Chain of custody" means the methodology of tracking specified materials or~~
22 ~~substances for the purpose of maintaining control and accountability from initial~~
23 ~~collection to final disposition for all such materials or substances, and providing for~~

1 ~~accountability at each stage in handling, testing, and storing specimens and reporting~~
2 ~~test results.~~

3 ~~4. "Confirmation test", "confirmed test", or "confirmed drug test" means a second~~
4 ~~analytical procedure used to identify the presence of a specific drug or metabolite in a~~
5 ~~specimen. The test must be different in scientific principle from that of the initial test~~
6 ~~procedure and must be capable of providing requisite specificity, sensitivity, and~~
7 ~~quantitative accuracy.~~

8 ~~5. "Department" means the department of human services.~~

9 ~~6. "Drug" means marijuana, cocaine, methamphetamine, amphetamine, and opiates,~~
10 ~~such as morphine, and any other substance identified by the department by rule.~~

11 ~~7. "Drug test" or "test" means any chemical, biological, or physical instrumental analysis~~
12 ~~administered by a drug testing agency authorized to do so under this chapter, for the~~
13 ~~purpose of determining the presence or absence of a drug or a drug's metabolites,~~
14 ~~under rules adopted by the department.~~

15 ~~8. "Drug testing agency" means an entity that has the required credentials as established~~
16 ~~by regulatory or certification authorities to administer tests using an individual's urine,~~
17 ~~blood, or DNA which will detect and validate the presence of drugs in the individual's~~
18 ~~body.~~

19 ~~9. "Drug treatment program" means a service provider that provides confidential, timely,~~
20 ~~and expert identification, assessment, and resolution of drug or alcohol abuse~~
21 ~~problems affecting individuals.~~

22 ~~10. "Five panel test" means a test for marijuana, cocaine, methamphetamine,~~
23 ~~amphetamine, and opiates, such as morphine.~~

24 ~~11. "Initial drug test" means a procedure that qualifies as a screening test under rules~~
25 ~~governing drug testing approved by rule by the department.~~

26 ~~12. "Legal guardian" means an individual who has the legal authority to provide for the~~
27 ~~care, supervision, or control of a minor child as established by law or court order.~~

28 ~~13. "Protective payee" means a caretaker relative; legal guardian of the child; member of~~
29 ~~the community who is affiliated with a religious, community, neighborhood, or~~
30 ~~charitable organization; or other volunteer who agrees in writing to fulfill the role of~~
31 ~~protective payee and utilize benefits received in a manner consistent with the best~~

~~interests of the child. The term does not include a caretaker relative or guardian who is the applicant for benefits who tests positive for the use of a drug.~~

~~14. "Specimen" means tissue, fluid, or a product of the human body capable of revealing the presence of a drug or its metabolites.~~

~~**Drug testing.**~~

~~1. The department shall develop a plan to implement a program of suspicion-based drug testing for each applicant who is otherwise eligible for benefits.~~

~~2. a. A dependent child under the age of eighteen is exempt from the drug testing requirement under this chapter; however, a minor parent who is an applicant for benefits who does not live with a parent, legal guardian, or other adult caretaker relative is subject to the drug testing requirements of this chapter.~~

~~b. In a two-parent household, only one parent may be required to undergo a drug test.~~

~~3. The department shall consult with substance abuse treatment experts and shall develop appropriate screening techniques and processes that will establish reasonable cause an applicant for benefits is using a drug and which can be used to establish the necessary criteria to permit the department to require the applicant to undergo a urine based five panel drug test to be conducted by a drug testing agency.~~

~~a. An applicant may inform the drug testing agency administering the test of any prescription or over-the-counter medication the applicant is taking. A drug for which an applicant has a current valid prescription may not be a basis for denial of benefits.~~

~~b. Following an initial positive drug test, the applicant shall undergo a confirmation test using the same urine sample from the initial positive test before determination of benefit eligibility. The department shall use results of the confirmation test to determine final eligibility for benefits.~~

~~4. The department shall identify and select a screening tool as part of the development of the screening technique to be employed for this program.~~

~~5. At a minimum, the drug testing plan must require the following:~~

~~a. Establishment of a referral process for an applicant who tests positive to be referred by the department to an appropriate treatment resource for drug abuse.~~

1 ~~treatment or other resource for an appropriate treatment period as determined by~~
2 ~~the department. The applicant is responsible for the expense of treatment under~~
3 ~~this subdivision. The plan must require evidence of ongoing compliance during~~
4 ~~the treatment period.~~

5 ~~b. Refusal of an applicant who tests positive to enter a treatment plan or failure to~~
6 ~~complete the treatment plan results in ineligibility for benefits for one year.~~

7 ~~c. At the conclusion of the treatment period, the applicant must be tested again~~
8 ~~using the urine-based five panel drug test, and the plan must require that upon~~
9 ~~retesting, if the applicant tests positive for the use of drugs which is validated by~~
10 ~~a confirmation test, the applicant is ineligible for benefits for six months.~~

11 ~~d. If the applicant tests positive for drugs in a subsequent drug test after the~~
12 ~~disqualification period, that applicant is ineligible to receive benefits for one year~~
13 ~~from the date of the positive confirmation drug test.~~

14 ~~e. If a parent or caretaker relative is deemed ineligible for benefits as a result of~~
15 ~~failing a drug test, the dependent child's eligibility for benefits is not affected, and~~
16 ~~an appropriate protective payee must be designated to receive benefits on behalf~~
17 ~~of a child who is under sixteen years of age.~~

18 ~~**Records.**~~

19 ~~1. Information, interviews, reports, statements, memoranda, and drug test results~~
20 ~~received by the department as part of the drug testing program established under this~~
21 ~~chapter are confidential and may not be used or received in evidence, obtained in~~
22 ~~discovery, or disclosed in any public or private proceedings, except in accordance with~~
23 ~~the administration of this chapter or the benefits program, in proceedings concerning~~
24 ~~the protection or permanency of children, or in adjudicating any claims or actions~~
25 ~~arising from the administration of this chapter, unless the applicant tested provides~~
26 ~~written consent permitting disclosure.~~

27 ~~2. Information regarding drug test results for tests administered under this chapter may~~
28 ~~not be released to law enforcement authorities or used in any criminal proceeding~~
29 ~~against the applicant. Information released contrary to this section is inadmissible as~~
30 ~~evidence in a criminal proceeding.~~

1 ~~3. This section does not prohibit the department or a drug testing agency conducting a~~
2 ~~drug test from having access to an adult applicant's drug test information or using the~~
3 ~~information if consulting with legal counsel in connection with actions brought under or~~
4 ~~related to this section, or when the information is relevant to the department's defense~~
5 ~~in a civil or administrative matter.~~

6 ~~4. This section does not prohibit the reporting of child abuse, child sexual abuse, or~~
7 ~~neglect of a child.~~

8 ~~**Rules:**~~

9 ~~1. The department shall adopt rules, as necessary, for the administration of this chapter.~~

10 ~~2. In adopting rules under this chapter, the department shall consider:~~

11 ~~a. Testing procedures established by the United States departments of health and~~
12 ~~human services and transportation;~~

13 ~~b. Screening procedures established by substance abuse experts to determine the~~
14 ~~criteria for reasonable cause to suspect an individual is likely to use drugs as~~
15 ~~defined in this chapter;~~

16 ~~c. Body specimens and minimum specimen amounts appropriate for drug testing;~~

17 ~~d. Methods of analysis and procedures to ensure reliable drug testing results,~~
18 ~~including standards for initial tests and confirmation tests;~~

19 ~~e. Minimum cut-off detection levels for each drug or metabolites of the drug for the~~
20 ~~purposes of determining a positive test result;~~

21 ~~f. Chain-of-custody procedures to ensure proper identification, labeling, and~~
22 ~~handling of specimens tested; and~~

23 ~~g. Retention, storage, and transportation procedures to ensure reliable results of~~
24 ~~drug tests used in the administration of this chapter.~~

25 ~~**Limitations on use of test results.**~~

26 ~~An applicant whose drug test result is confirmed as positive in accordance with this chapter~~
27 ~~may not, because of that result alone, be deemed to have a handicap or disability as defined~~
28 ~~under federal, state, or local handicap and disability discrimination laws.~~

29 **SECTION 1. AMENDMENT.** Subsection 1 of section 50-09-29 of the North Dakota Century
30 Code is amended and reenacted as follows:

- 1 1. Except as provided in subsections 2, 3, and 4, the department of human services, in
2 its administration of the temporary assistance for needy families program, shall:
 - 3 a. Provide assistance to otherwise eligible women in the third trimester of a
4 pregnancy;
 - 5 b. Except as provided in subdivision c, afford eligible households benefits for no
6 more than sixty months;
 - 7 c. Exempt eligible households from the requirements of subdivision b due to mental
8 or physical disability of a parent or child, mental or physical incapacity of a
9 parent, or other hardship including a parent subject to domestic violence as
10 defined in section 14-07.1-01;
 - 11 d. Unless an exemption, exclusion, or disregard is required by law, count income
12 and assets whenever actually available;
 - 13 e. Except as provided in subdivision j, and as required to allow the state to receive
14 funds from the federal government under title IV-A, provide no benefits to
15 noncitizen immigrants who arrive in the United States after August 21, 1996;
 - 16 f. Limit eligibility to households with total available assets, not otherwise exempted
17 or excluded, of a value established by the department;
 - 18 g. Exclude one motor vehicle of any value in determining eligibility;
 - 19 h. Require work activities for all household members not specifically exempted by
20 the department of human services for reasons such as mental or physical
21 disability of a parent or child or mental or physical incapacity of a parent;
 - 22 i. Establish goals and take action to prevent and reduce the incidence of
23 out-of-wedlock pregnancies and establish numerical goals for reducing the
24 illegitimacy rate for the state for periods through calendar year 2005;
 - 25 j. To the extent required to allow the state to receive funds from the federal
26 government under title IV-A, provide benefits to otherwise eligible noncitizens
27 who are lawfully present in the United States;
 - 28 k. Establish and enforce standards against program fraud and abuse;
 - 29 l. Provide employment placement programs;
 - 30 m. Exempt from assets and income the savings and proportionate matching funds in
31 individual development accounts;

- 1 n. Determine the unemployment rate of adults living in a county that includes Indian
2 reservation lands and a significant population of Indian individuals by using
3 unemployment data provided by job service North Dakota;
- 4 o. When appropriate, require household members to complete high school;
- 5 p. To the extent required to allow the state to receive funds from the federal
6 government under title IV-A, exempt single parents from required work activities;
- 7 q. Provide for sanctions, including termination of assistance to the household, if a
8 household member fails to cooperate with work requirements;
- 9 r. Provide for sanctions, including termination of assistance to the household, if a
10 household member fails, without good cause, to cooperate with child support
11 activities;
- 12 s. Deny assistance with respect to a minor child absent from the household for
13 more than one calendar month, except as specifically provided by the state
14 agency for absences;
- 15 t. Require each household to participate in developing an individual employment
16 plan and provide for sanctions, including termination of assistance to the
17 household, if adult or minor household members age sixteen or older fail to
18 cooperate with the terms of the individual employment plan;
- 19 u. Provide pre-pregnancy family planning services that are to be incorporated into
20 the temporary assistance for needy families program assessment;
- 21 v. Except in cases of pregnancy resulting from rape or incest, not increase the
22 assistance amount to recognize the increase in household size when a child is
23 born to a household member who was a recipient of assistance under this
24 chapter during the probable month of the child's conception;
- 25 w. Disregard earned income as an incentive allowance for no more than twelve
26 months;
- 27 x. Require each individual employment plan participant undergo a mandatory
28 addiction screening, using a screening tool approved by the department. The
29 department shall provide training to the jobs opportunity and basic skills program
30 contractors on the use of the screening tool. Individual employment plan
31 participants who are identified, via the screening tool as at-risk for an addiction,

1 shall be referred to appropriate treatment services. The jobs opportunity and
2 basic skills program contractor may seek assistance from the department to
3 identify appropriate treatment;

4 ~~x~~.y. Consider, and if determined appropriate, authorize demonstration projects in
5 defined areas which may provide benefits and services that are not identical to
6 benefits and services provided elsewhere; and

7 ~~y~~.z. Unless at least seven years has elapsed since the most recent felony conviction
8 that has as an element the possession, use, or distribution of a controlled
9 substance, deny assistance to any individual who has been convicted of a felony
10 offense that has as an element the possession, use, or distribution of a controlled
11 substance as defined in section 102(6) of the Controlled Substances Act
12 [21 U.S.C. 802(6)].

13 **SECTION 2. EFFECTIVE DATE.** This Act becomes effective on April 1, 2018.