

Sixty-fifth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2279

Introduced by

Senators Campbell, Laffen, Roers

Representatives Johnston, Lefor, Louser

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 create and enact a new subdivision to subsection 1 of section 50-09-29 of the North
4 Dakota Century Code, relating to mandatory addiction screening for temporary assistance for
5 needy families program individual employment plan participants; to provide for a report to the
6 legislative management; to provide a penalty; and to provide an effective date.

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

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

10 ~~Definitions.~~

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

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

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

22 ~~3. "Chain of custody" means the methodology of tracking specified materials or~~
23 ~~substances for the purpose of maintaining control and accountability from initial~~
24 ~~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. "County" means the county charged with administration of the temporary assistance~~
9 ~~for needy families program in its county.~~

10 ~~6. "Department" means the department of human services.~~

11 ~~7. "Drug" means marijuana, cocaine, methamphetamine, amphetamine, and opiates,~~
12 ~~such as morphine, and any other substance identified by the department by rule.~~

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

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

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

24 ~~11. "Five panel drug test" means a drug test for marijuana, cocaine, methamphetamine,~~
25 ~~amphetamine, and opiates, such as morphine.~~

26 ~~12. "Initial drug test" means a procedure that qualifies as a screening test under rules~~
27 ~~governing drug testing approved by rule by the department.~~

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

30 ~~14. "Protective payee" means a caretaker relative; legal guardian of the child; member of~~
31 ~~the community who is affiliated with a religious, community, neighborhood, or~~

1 ~~charitable organization; or other volunteer who agrees in writing to fulfill the role of~~
2 ~~protective payee and utilize benefits received in a manner consistent with the best~~
3 ~~interests of the child. The term does not include a caretaker relative or guardian who is~~
4 ~~the applicant for benefits who tests positive for the use of a drug.~~

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

7 ~~**Drug testing:**~~

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

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

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

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

22 ~~a. An applicant may inform the person administering the drug test of any~~
23 ~~prescription or over-the-counter medication the applicant is taking. A drug for~~
24 ~~which an applicant has a current valid prescription may not be a basis for a final~~
25 ~~determination of a positive drug test.~~

26 ~~b. Following an initial positive drug test, the applicant shall undergo a confirmation~~
27 ~~test. The department shall use results of the confirmation test to determine final~~
28 ~~eligibility for benefits.~~

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

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

- 1 ~~a. Establishment of a referral process for an applicant who tests positive to be~~
2 ~~referred by the county for a drug assessment. Based on the results of this drug~~
3 ~~assessment, the county shall establish a treatment plan for the applicant which~~
4 ~~may include referral to drug abuse treatment or other resource. The treatment~~
5 ~~plan may be an alternative to or work in conjunction with work readiness, training,~~
6 ~~and job placement services. The treatment plan must require evidence of~~
7 ~~ongoing compliance during the treatment period.~~
- 8 ~~b. An applicant is ineligible for benefits for one year if the applicant:~~
9 ~~(1) Refuses to submit to a drug test;~~
10 ~~(2) Refuses to submit to a drug assessment; or~~
11 ~~(3) Does not participate in a treatment plan.~~
- 12 ~~c. During the treatment plan the applicant may be drug tested. At the conclusion of~~
13 ~~the treatment plan the applicant must be tested again using the urine based five-~~
14 ~~panel drug test. The plan must require that upon retesting, if the applicant tests~~
15 ~~positive for the use of drugs which is validated by a confirmation test, the~~
16 ~~applicant is ineligible for benefits for six months.~~
- 17 ~~d. If the applicant tests positive for drugs in a subsequent drug test after a six-month~~
18 ~~disqualification period, that applicant is ineligible to receive benefits for one year~~
19 ~~from the date of the positive confirmation drug test.~~
- 20 ~~e. If a parent or caretaker relative is deemed ineligible for benefits as a result of~~
21 ~~failing a drug test, the dependent child's eligibility for benefits is not affected, and~~
22 ~~an appropriate protective payee must be designated to receive benefits on behalf~~
23 ~~of a child who is under sixteen years of age.~~

24 ~~**Records.**~~

- 25 ~~1. Information, interviews, reports, statements, memoranda, and drug test results~~
26 ~~received by the department as part of the drug testing program established under this~~
27 ~~chapter are confidential and may not be used or received in evidence, obtained in~~
28 ~~discovery, or disclosed in any public or private proceedings, except in accordance with~~
29 ~~the administration of this chapter or the benefits program, in proceedings concerning~~
30 ~~the protection or permanency of children, or in adjudicating any claims or actions.~~

1 ~~arising from the administration of this chapter, unless the applicant tested provides~~
2 ~~written consent permitting disclosure.~~

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

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

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

14 ~~**Rules.**~~

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

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

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

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

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

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

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

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

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

1 ~~— **Limitations on use of test results.**~~

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

5 **SECTION 1.** A new subdivision to subsection 1 of section 50-09-29 of the North Dakota
6 Century Code is created and enacted as follows:

7 Require each individual employment plan participant to undergo an addiction
8 screening to identify whether the participant is at risk for addiction. The
9 department shall establish a screening tool. The department shall provide training
10 on the use of this screening tool to any person contracting to provide individual
11 employment plan services under this subsection. If a contractor identifies an
12 individual employment plan participant as at risk for addiction, that contractor
13 shall refer that participant to appropriate treatment services, which may include a
14 drug test. A contractor may seek assistance from the department to identify
15 appropriate treatment services for a participant identified as at risk for addiction.
16 A participant who fails to comply with the referred treatment services under this
17 subdivision is subject to sanction under this subsection.

18 **SECTION 2. DEPARTMENT OF HUMAN SERVICES - REPORT TO LEGISLATIVE**

19 **MANAGEMENT.** During the 2017-18 interim, the department of human services, through its
20 third-party contractors, shall collect data regarding whether implementation of section 1 of this
21 Act has an impact on children in households receiving temporary assistance to needy families.
22 Before August 1, 2018, the department shall report to the legislative management on the
23 implementation of section 1 of this Act and any impact implementation has on children in these
24 households.

25 **SECTION 3. EFFECTIVE DATE.** This Act becomes effective on April 1, 2018.