

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.

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

4 **SECTION 1.** A new chapter to title 50 of the North Dakota Century Code is created and
5 enacted as follows:

6 **Definitions.**

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

- 8 1. "Benefits" means benefits received under the temporary assistance to needy families
9 program.
- 10 2. "Caretaker relative" means one or more of the following individuals with whom a child
11 is living: the father, mother, grandfather or grandmother of any degree, brother or
12 sister of the whole or half-blood, stepfather, stepmother, stepbrother, stepsister, aunt
13 or uncle of any degree, first cousin, and nephew or niece; the relatives by adoption
14 within the previously named classes of persons; the biological relatives within the
15 previous degrees of relationship; and a legal spouse of an individual within the
16 previously named classes of individuals, even if the marriage has been terminated by
17 death or divorce.
- 18 3. "Chain of custody" means the methodology of tracking specified materials or
19 substances for the purpose of maintaining control and accountability from initial
20 collection to final disposition for all such materials or substances, and providing for
21 accountability at each stage in handling, testing, and storing specimens and reporting
22 test results.

- 1 4. "Confirmation test", "confirmed test", or "confirmed drug test" means a second
2 analytical procedure used to identify the presence of a specific drug or metabolite in a
3 specimen. The test must be different in scientific principle from that of the initial test
4 procedure and must be capable of providing requisite specificity, sensitivity, and
5 quantitative accuracy.
- 6 5. "Department" means the department of human services.
- 7 6. "Drug" means marijuana, cocaine, methamphetamine, amphetamine, and opiates,
8 such as morphine, and any other substance identified by the department by rule.
- 9 7. "Drug test" or "test" means any chemical, biological, or physical instrumental analysis
10 administered by a drug testing agency authorized to do so under this chapter, for the
11 purpose of determining the presence or absence of a drug or a drug's metabolites,
12 under rules adopted by the department.
- 13 8. "Drug testing agency" means an entity that has the required credentials as established
14 by regulatory or certification authorities to administer tests using an individual's urine,
15 blood, or DNA which will detect and validate the presence of drugs in the individual's
16 body.
- 17 9. "Drug treatment program" means a service provider that provides confidential, timely,
18 and expert identification, assessment, and resolution of drug or alcohol abuse
19 problems affecting individuals.
- 20 10. "Five panel test" means a test for marijuana, cocaine, methamphetamine,
21 amphetamine, and opiates, such as morphine.
- 22 11. "Initial drug test" means a procedure that qualifies as a screening test under rules
23 governing drug testing approved by rule by the department.
- 24 12. "Legal guardian" means an individual who has the legal authority to provide for the
25 care, supervision, or control of a minor child as established by law or court order.
- 26 13. "Protective payee" means a caretaker relative; legal guardian of the child; member of
27 the community who is affiliated with a religious, community, neighborhood, or
28 charitable organization; or other volunteer who agrees in writing to fulfill the role of
29 protective payee and utilize benefits received in a manner consistent with the best
30 interests of the child. The term does not include a caretaker relative or guardian who is
31 the applicant for benefits who tests positive for the use of a drug.

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

3 **Drug testing.**

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

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

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

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

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

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

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

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

28 a. Establishment of a referral process for an applicant who tests positive to be
29 referred by the department to an appropriate treatment resource for drug abuse
30 treatment or other resource for an appropriate treatment period as determined by
31 the department. The applicant is responsible for the expense of treatment under

- 1 this subdivision. The plan must require evidence of ongoing compliance during
2 the treatment period.
- 3 b. Refusal of an applicant who tests positive to enter a treatment plan or failure to
4 complete the treatment plan results in ineligibility for benefits for one year.
- 5 c. At the conclusion of the treatment period, the applicant must be tested again
6 using the urine-based five panel drug test, and the plan must require that upon
7 retesting, if the applicant tests positive for the use of drugs which is validated by
8 a confirmation test, the applicant is ineligible for benefits for six months.
- 9 d. If the applicant tests positive for drugs in a subsequent drug test after the
10 disqualification period, that applicant is ineligible to receive benefits for one year
11 from the date of the positive confirmation drug test.
- 12 e. If a parent or caretaker relative is deemed ineligible for benefits as a result of
13 failing a drug test, the dependent child's eligibility for benefits is not affected, and
14 an appropriate protective payee must be designated to receive benefits on behalf
15 of a child who is under sixteen years of age.

16 **Records.**

- 17 1. Information, interviews, reports, statements, memoranda, and drug test results
18 received by the department as part of the drug testing program established under this
19 chapter are confidential and may not be used or received in evidence, obtained in
20 discovery, or disclosed in any public or private proceedings, except in accordance with
21 the administration of this chapter or the benefits program, in proceedings concerning
22 the protection or permanency of children, or in adjudicating any claims or actions
23 arising from the administration of this chapter, unless the applicant tested provides
24 written consent permitting disclosure.
- 25 2. Information regarding drug test results for tests administered under this chapter may
26 not be released to law enforcement authorities or used in any criminal proceeding
27 against the applicant. Information released contrary to this section is inadmissible as
28 evidence in a criminal proceeding.
- 29 3. This section does not prohibit the department or a drug testing agency conducting a
30 drug test from having access to an adult applicant's drug test information or using the
31 information if consulting with legal counsel in connection with actions brought under or

1 related to this section, or when the information is relevant to the department's defense
2 in a civil or administrative matter.

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

5 **Rules.**

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

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

8 a. Testing procedures established by the United States departments of health and
9 human services and transportation;

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

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

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

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

18 f. Chain-of-custody procedures to ensure proper identification, labeling, and
19 handling of specimens tested; and

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

22 **Limitations on use of test results.**

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