

House Bill 772

By: Representative Morris of the 156<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to public  
2 assistance, so as to require drug testing for applicants for food stamps; to provide  
3 requirements; to provide that any person who fails such drug test shall be ineligible to receive  
4 food stamps; to provide for reapplication; to provide for children's food stamps; to provide  
5 for confidentiality of records; to provide for related matters; to repeal conflicting laws; and  
6 for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 SECTION 1.

9 Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to public assistance,  
10 is amended in Article 1, relating to general provisions, by adding a new Code section to read  
11 as follows:

12 "49-4-20.

13 (a) As used in this Code section, the term 'established drug test' means the collection and  
14 testing of bodily fluids administered in a manner equivalent to that required by the  
15 Mandatory Guidelines for Federal Workplace Drug Testing Programs established by the  
16 United States Department of Health and Human Services or other professionally valid  
17 procedures approved by the department; provided, however, that where possible and  
18 practicable, a swab test shall be used in lieu of a urinalysis.

19 (b) The department shall adopt rules and regulations for an established drug test that  
20 includes the following:

- 21 (1) Which illegal drugs will be the subject of testing;
- 22 (2) Methods for assuring minimal privacy intrusions during collection of body fluid  
23 specimens for such testing;
- 24 (3) Methods for assuring proper storage, transportation, and handling of such specimens  
25 in order to ensure the integrity of the testing process;

- 26 (4) The identity of those persons entitled to the results of such tests and methods for  
27 ensuring that only authorized persons are given access to such results;
- 28 (5) A list of laboratories qualified to conduct established drug tests;
- 29 (6) A list of approved substance abuse treatment providers;
- 30 (7) Procedures for persons undergoing drug testing prior to the collection of body fluid  
31 specimens for such testing, so as to provide information regarding the use of any drug  
32 pursuant to a medical prescription or as otherwise authorized by law which may affect  
33 the results of such test;
- 34 (8) A requirement that the test be conducted no later than 48 hours after the application  
35 is approved by the department for food stamps eligibility. Proof of eligibility from the  
36 department shall be issued to the applicant. The applicant shall show proof of eligibility  
37 to an authorized test examiner prior to submitting to the test; and
- 38 (9) A requirement that any applicant who demonstrates proof of active and current  
39 Medicaid benefits shall pay a drug screening application fee of no more than \$17.00, and  
40 no authorized test examiner shall conduct a drug test if an applicant demonstrates active  
41 and current Medicaid benefits unless the applicant presents a receipt proving that he or  
42 she has paid the required drug screening application fee. Eligible applicants who do not  
43 have active and current Medicaid benefits shall be responsible for paying the full cost of  
44 administering the drug test upon presentation to an authorized examiner.
- 45 (c) The department shall require a drug test consistent with subsection (b) of this Code  
46 section to screen each individual who applies for food stamps. The cost of drug testing  
47 shall be the responsibility of the individual tested, provided that the individual does not  
48 submit proof of active Medicaid benefits to subsidize the cost of such drug testing pursuant  
49 to paragraph (9) of subsection (b) of this Code section. No assistance payment shall be  
50 delayed because of the requirements of this Code section, and any payments made prior to  
51 the department's receipt of a test result showing a failure shall be recoverable.
- 52 (d) Any recipient of food stamps who tests positive for controlled substances as a result  
53 of a drug test required under this Code section shall be ineligible to receive food stamps as  
54 follows:
- 55 (1) For a first positive result, the recipient shall be ineligible for food stamps for one  
56 month and until he or she tests negative in a retest;
- 57 (2) For a second positive result, the recipient shall be ineligible for food stamps for three  
58 months and until he or she tests negative in a retest; and
- 59 (3) For a third and each subsequent positive result, the recipient shall be ineligible for  
60 food stamps for one year and until he or she tests negative in a retest unless the individual  
61 meets the requirements of subsection (f) of this Code section.
- 62 (e) The department shall:

- 63 (1) Provide notice of drug testing to each individual at the time of application. The  
64 notice shall advise the individual that drug testing will be conducted as a condition for  
65 receiving food stamps and that the individual shall bear the cost of testing. If the  
66 individual tests negative for controlled substances, the department shall increase the  
67 amount of the initial food stamps by the amount paid by the individual for the drug  
68 testing. However, if the individual used an active and current Medicaid benefit pursuant  
69 to paragraph (9) of subsection (b) of this Code section to subsidize the cost of the test, the  
70 individual shall not be eligible for direct food stamps reimbursement. The individual  
71 shall be advised that the required drug testing may be avoided if the individual does not  
72 apply for food stamps. Dependent children under the age of 18 are exempt from the drug  
73 testing requirement;
- 74 (2) Require that for two-parent families, one parent shall comply with the drug testing  
75 requirement;
- 76 (3) Require that any teen parent who is not required to live with a parent, legal guardian,  
77 or other adult caretaker relative shall comply with the drug testing requirement;
- 78 (4) Advise each individual to be tested, before the test is conducted, that he or she may,  
79 but is not required to, advise the agent administering the test of any prescription or over  
80 the counter medication he or she is taking;
- 81 (5) Require each individual to be tested to sign a written acknowledgment that he or she  
82 has received and understands the notice and advice provided under paragraphs (1) and  
83 (4) of this subsection;
- 84 (6) Assure each individual being tested a reasonable degree of dignity while producing  
85 and submitting a sample for drug testing, consistent with the state's need to ensure the  
86 reliability of the sample;
- 87 (7) Specify circumstances under which an individual who fails a drug test has the right  
88 to take one or more additional tests;
- 89 (8) Inform an individual who tests positive for a controlled substance and is deemed  
90 ineligible for food stamps for one year pursuant to paragraph (3) of subsection (d) of this  
91 Code section that the individual may reapply for food stamps six months after the date  
92 of the positive drug test if he or she meets the requirements of subsection (f) of this Code  
93 section; and
- 94 (9) Provide any individual who tests positive with a list of substance abuse treatment  
95 providers approved by the department which are available in the area in which he or she  
96 resides. Neither the department nor the state shall be responsible for providing or paying  
97 for substance abuse treatment.
- 98 (f) An individual who tests positive for an illegal drug and is denied food stamps for one  
99 year may reapply for food stamps after six months if the individual can document the

100 successful completion of a substance abuse treatment program offered by a provider  
101 approved by the department. An individual who has met the requirements of this  
102 subsection and reapplies for food stamps shall also pass an initial drug test and meet the  
103 requirements of subsection (c) of this Code section. Any drug test conducted while the  
104 individual is undergoing substance abuse treatment shall meet the requirements of  
105 subsection (b) of this Code section. The cost of any drug testing provided under this Code  
106 section and substance abuse treatment shall be the responsibility of the individual being  
107 tested and receiving treatment. An individual who fails the drug test required under  
108 subsection (c) of this Code section may reapply for food stamps under this subsection only  
109 once.

110 (g) If a parent is deemed ineligible for food stamps as a result of failing a drug test  
111 conducted under this Code section:

112 (1) The dependent child's eligibility for food stamps shall not be affected;

113 (2) An appropriate protective payee shall be designated to receive food stamps on behalf  
114 of the child; and

115 (3) The parent may choose to designate another individual to receive food stamps for the  
116 parent's minor child. The designated individual must be an immediate family member  
117 or, if an immediate family member is not available or the family member declines the  
118 option, another individual approved by the department. The designated individual shall  
119 also undergo drug testing before being approved to receive food stamps on behalf of the  
120 child. If the designated individual tests positive for controlled substances, he or she shall  
121 be ineligible to receive food stamps on behalf of the child.

122 (h) The results of any drug test performed according to this Code section shall not be  
123 subject to disclosure under Article 4 of Chapter 18 of Title 50, relating to inspection of  
124 public records. Such results shall not be used as a part of a criminal investigation or  
125 criminal prosecution. Such results shall not be used in a civil action or otherwise disclosed  
126 to any person or entity without the express written consent of the person tested or his or her  
127 heirs or legal representative. All such records shall be destroyed and deleted five years  
128 after the date of the test.

129 (i) No testing shall be required by the provisions of this Code section for any person whom  
130 the department determines is significantly hindered, because of a physical or mental  
131 handicap or developmental disability, from doing so or for any person enrolled in an  
132 enhanced primary care case management program operated by the Department of  
133 Community Health, Division of Medical Assistance to serve frail elderly and disabled  
134 beneficiaries to improve the health outcomes of persons with chronic health conditions by  
135 linking primary medical care with home and community based services. In addition, no  
136 testing shall be required by the provisions of this Code section for any individuals receiving

137 or on a waiting list for long-term services and supports through a non-Medicaid home and  
138 community based services program or for any individual residing in a facility such as a  
139 nursing home, personal care home, assisted living community, intermediate care facility  
140 for the intellectually or developmentally disabled, community living arrangement, or host  
141 home.

142 (j) The department shall adopt rules to implement this Code section."

143 **SECTION 2.**

144 All laws and parts of laws in conflict with this Act are repealed.