

112TH CONGRESS  
1ST SESSION

# H. R. 1769

To amend title IV of the Social Security Act to require States to implement a drug testing program for applicants for and recipients of assistance under the Temporary Assistance for Needy Families (TANF) program.

---

## IN THE HOUSE OF REPRESENTATIVES

MAY 5, 2011

Mr. BOUSTANY introduced the following bill; which was referred to the Committee on Ways and Means

---

## A BILL

To amend title IV of the Social Security Act to require States to implement a drug testing program for applicants for and recipients of assistance under the Temporary Assistance for Needy Families (TANF) program.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Drug Free Families  
5 Act of 2011”.

1 **SEC. 2. DRUG TESTING PROGRAM FOR APPLICANTS FOR**  
2 **AND RECIPIENTS OF ASSISTANCE UNDER**  
3 **STATE TANF PROGRAMS.**

4 (a) STATE PLAN REQUIREMENT OF DRUG TESTING  
5 PROGRAM.—Section 402(a) of the Social Security Act (42  
6 U.S.C. 602(a)) is amended by adding at the end the fol-  
7 lowing new paragraph:

8 “(8) CERTIFICATION THAT THE STATE WILL  
9 OPERATE AN ILLEGAL DRUG USE TESTING PRO-  
10 GRAM.—

11 “(A) IN GENERAL.—A certification by the  
12 chief executive officer of the State that the  
13 State will operate a program to test all appli-  
14 cants for assistance under the State program  
15 funded under this part, and all individuals de-  
16 scribed in subparagraph (B) of section  
17 408(a)(12), for the use of illegal drugs (as de-  
18 fined in subparagraph (G)(i) of such section),  
19 and to deny assistance under such State pro-  
20 gram to individuals who test positive for illegal  
21 drug use or who are convicted of drug-related  
22 crimes, as required by such section.

23 “(B) AUTHORITY FOR CONTINUED TEST-  
24 ING.—The program described in subparagraph  
25 (A) may include a plan to continue testing indi-  
26 viduals receiving assistance under the State

1 program funded under this part for illegal drug  
2 use at random or set intervals after the initial  
3 testing of such individuals, at the discretion of  
4 the State agency administering such State pro-  
5 gram.”.

6 (b) REQUIREMENT THAT APPLICANTS AND INDIVID-  
7 UALS RECEIVING ASSISTANCE BE TESTED FOR ILLEGAL  
8 DRUG USE.—Section 408(a) of the Social Security Act  
9 (42 U.S.C. 608(a)) is amended by adding at the end the  
10 following new paragraph:

11 “(12) REQUIREMENT FOR DRUG TESTING; DE-  
12 NIAL OF ASSISTANCE FOR INDIVIDUALS FOUND TO  
13 HAVE USED ILLEGAL DRUGS AND INDIVIDUALS CON-  
14 VICTED OF DRUG-RELATED OFFENSES.—

15 “(A) IN GENERAL.—A State to which a  
16 grant is made under section 403 shall not use  
17 any part of the grant to provide assistance to  
18 any individual who has not been tested for ille-  
19 gal drug use under the program required under  
20 section 402(a)(8).

21 “(B) TRANSITION RULE.—In the case of  
22 an individual who is receiving assistance under  
23 the State program funded under this part on  
24 the effective date of the Drug Free Families  
25 Act of 2011, or whose application for assistance

1 is approved before such date if such assistance  
2 has not begun as of such date, a State may not  
3 provide assistance to such individual unless  
4 such individual is tested for illegal drug use  
5 under the program described in subparagraph  
6 (A) after the 3rd month that begins after such  
7 date.

8 “(C) DENIAL OF ASSISTANCE FOR INDI-  
9 VIDUALS WHO TEST POSITIVE FOR ILLEGAL  
10 DRUG USE AND INDIVIDUALS CONVICTED OF  
11 DRUG-RELATED CRIMES.—In the case of—

12 “(i) an individual who tests positive  
13 for illegal drug use under the program de-  
14 scribed in subparagraph (A); or

15 “(ii) an individual who is convicted of  
16 a drug-related crime after the effective  
17 date of the Drug Free Families Act of  
18 2011;

19 the State shall not provide assistance to the in-  
20 dividual under the State program funded under  
21 this part unless such individual enters and suc-  
22 cessfully completes (as determined by the State)  
23 a drug rehabilitation or treatment program and  
24 does not test positive for illegal drug use in the  
25 6-month period beginning on the date the indi-

1           vidual enters such rehabilitation or treatment  
2           program. During such 6-month period the State  
3           may continue to provide assistance to an indi-  
4           vidual who has not been convicted of a felony  
5           drug-related crime, unless the individual tests  
6           positive for illegal drug use during such period.  
7           The State may test the individual for illegal  
8           drug use at random or set intervals, at the dis-  
9           cretion of the State, after such period.

10           “(D) WAITING PERIOD AFTER DENIAL OF  
11           BENEFITS.—In the case of an individual who is  
12           denied assistance under subparagraph (C) be-  
13           cause of failure to satisfy the requirements of  
14           such subparagraph, a State may not provide as-  
15           sistance to such individual under the State pro-  
16           gram funded under this part at any time during  
17           the 2-year period beginning on the date the in-  
18           dividual is so denied.

19           “(E) PERMANENT DENIAL OF ASSISTANCE  
20           AFTER THIRD DRUG-RELATED DENIAL.—In the  
21           case of an individual who is denied assistance  
22           under subparagraph (C) 3 times, as a result of  
23           3 separate positive tests for illegal drug use, 3  
24           separate convictions for drug-related crimes  
25           (not including convictions that are imposed con-

1 currently in time), or any combination of 3 such  
2 separate tests or convictions, a State may not  
3 provide assistance to such individual under the  
4 State program funded under this part at any  
5 time after the 3rd such test or conviction.

6 “(F) LIMITATION ON WAIVER AUTHOR-  
7 ITY.—The Secretary may not waive the provi-  
8 sions of this paragraph under section 1115.

9 “(G) DEFINITIONS.—For purposes of this  
10 paragraph—

11 “(i) ILLEGAL DRUG.—The term ‘ille-  
12 gal drug’ means a controlled substance as  
13 defined in section 102 of the Controlled  
14 Substances Act (21 U.S.C. 802).

15 “(ii) DRUG REHABILITATION OR  
16 TREATMENT PROGRAM.—The term ‘drug  
17 rehabilitation or treatment program’  
18 means a program determined by the State  
19 to provide treatment that can lead to the  
20 rehabilitation of drug users, but only if  
21 such program complies with all applicable  
22 Federal, State, and local laws and regula-  
23 tions.

24 “(iii) DRUG-RELATED CRIME.—The  
25 term ‘drug-related crime’ means any crime

1                   involving the possession, use, or sale of an  
2                   illegal drug.”.

3           (c) EFFECTIVE DATE.—

4                   (1) IN GENERAL.—Except as provided in para-  
5                   graph (2), the amendments made by this section  
6                   shall take effect on the 1st day of the 1st calendar  
7                   quarter that begins on or after the date that is 1  
8                   year after the date of the enactment of this Act.

9                   (2) DELAY PERMITTED IF STATE LEGISLATION  
10                  REQUIRED.—In the case of a State plan under sec-  
11                  tion 402(a) of the Social Security Act which the Sec-  
12                  retary of Health and Human Services determines re-  
13                  quires State legislation (other than legislation appro-  
14                  priating funds) in order for the plan to meet the ad-  
15                  ditional requirements imposed by the amendments  
16                  made by this Act, the State plan shall not be re-  
17                  garded as failing to comply with the requirements of  
18                  such section 402(a) solely on the basis of the failure  
19                  of the plan to meet such additional requirements be-  
20                  fore the 1st day of the 1st calendar quarter begin-  
21                  ning after the close of the 1st regular session of the  
22                  State legislature that begins after the date of enact-  
23                  ment of this Act. For purposes of the previous sen-  
24                  tence, in the case of a State that has a 2-year legis-  
25                  lative session, each year of such session shall be

1 deemed to be a separate regular session of the State  
2 legislature.

○