

SENATE BILL NO. 89—SENATOR SETTELMAYER

FEBRUARY 6, 2013

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions governing public assistance.
(BDR 38-469)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to public assistance; requiring persons who apply for public assistance to submit to a test to detect the presence of a controlled substance; requiring the Division of Welfare and Supportive Services of the Department of Health and Human Services to deny public assistance to a person whose test result indicates the presence of a controlled substance unless the person participates in a treatment program; providing exceptions for certain persons; providing for the confidentiality of test results; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law provides for the receipt of public assistance, including welfare and
2 other supportive services, for eligible persons. (Chapter 422A of NRS) This bill
3 requires a person who applies for public assistance to submit to an oral fluid drug
4 screen as a condition to the receipt of public assistance. If the result of the test
5 indicates the presence of a controlled substance, the person may request a urinalysis
6 to verify that result. As a condition to the receipt of public assistance, a person
7 whose test indicates the presence of a controlled substance must attend a treatment
8 program and must submit to a subsequent oral fluid drug screen. Failure to submit
9 to a drug screen test or to participate in a treatment program results in the denial or
10 termination of public assistance. This bill provides an exemption for persons who
11 are 65 years of age or older. Persons who are enrolled in a substance abuse program
12 at the time of application are also exempt until they complete the program. If a
13 person submits evidence that he or she is lawfully taking a controlled substance, he
14 or she may receive public assistance even though his or her test result indicates the
15 presence of that controlled substance. This bill also authorizes a person whose test
16 result indicates the presence of a controlled substance to request a hearing and to
17 rebut the result of that test.



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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 422A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this act.

Sec. 2. *As used in sections 2 to 10, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3, 4 and 5 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Controlled substance” has the meaning ascribed to it in 21 U.S.C. § 802(6).*

Sec. 4. *“Oral fluid drug screen” means an analysis of saliva that is used to detect the presence of a controlled substance.*

Sec. 5. *“Urinalysis” means a laboratory analysis of urine that is used to detect the presence of a controlled substance.*

Sec. 6. *The provisions of sections 2 to 10, inclusive, of this act do not apply to persons whose eligibility for public assistance is determined in accordance with NRS 422A.345.*

Sec. 7. 1. *Except as otherwise provided in this section, as a condition to the receipt of public assistance, a person must submit to an oral fluid drug screen. If the result of the oral fluid drug screen indicates the presence of a controlled substance, the person may request a urinalysis to verify that result. The Division shall provide for a urinalysis upon request. If the result of the urinalysis confirms the presence of a controlled substance, the cost of the urinalysis must be deducted from the public assistance that may otherwise be available to the person.*

2. *As a condition to the receipt of public assistance, if the result of an oral fluid drug screen or urinalysis, as applicable, indicates the presence of a controlled substance, the person must participate in a program for the treatment of the abuse of controlled substances that has been approved by the Division. If the person:*

(a) Participates in such a program, the Division shall provide public assistance to the person, if he or she is otherwise eligible, until the result of a second test pursuant to subsection 3.

(b) Fails to participate in such a program, the Division shall deny public assistance to the person.

3. *As a condition to the receipt of public assistance, if a person participates in a program for the treatment of the abuse of controlled substances pursuant to subsection 2, the person must submit to an oral fluid drug screen:*

(a) Thirty business days after the date of the initial test conducted pursuant to subsection 1; or



(b) More than 30 business days after the date of the initial test conducted pursuant to subsection 1 as prescribed by the Division if the Division determines that, due to the chemical structure or rate of elimination of the applicable controlled substance or other relevant factors, the controlled substance may still be detectable in the person's oral fluid 30 business days after the date of the initial test even in the absence of the use of that substance.

4. If the result of an oral fluid drug screen pursuant to subsection 3 indicates the presence of a controlled substance, the person may request a urinalysis to verify that result. The Division shall provide for a urinalysis upon request. If the result of the urinalysis confirms the presence of a controlled substance, the cost of the urinalysis must be deducted from the public assistance that may otherwise be available to that person. If the result of the oral fluid drug screen or urinalysis, as applicable, confirms the presence of a controlled substance, the Division shall terminate the public assistance.

5. If public assistance is denied or terminated pursuant to this section, the person whose assistance is denied or terminated may request a hearing pursuant to NRS 422A.275.

6. If public assistance is denied or terminated pursuant to this section, the person whose assistance is denied or terminated may:

(a) Reapply for public assistance not earlier than 90 calendar days after the denial or termination of public assistance; or

(b) If the person requests a hearing pursuant to NRS 422A.275 and the denial or termination is upheld, reapply for public assistance not earlier than 90 calendar days after the date on which the denial or termination is upheld.

7. The Division shall not deny or terminate public assistance pursuant to this section if the person applying for public assistance submits proof satisfactory to the Division that the person:

(a) Holds a valid registry identification card issued pursuant to chapter 453A of NRS and the result of the person's test indicates the presence of marijuana or marijuana metabolite.

(b) Holds a lawfully issued prescription for a controlled substance and the result of the person's test indicates the presence of that controlled substance.

8. The Division shall not require a person to submit to an oral fluid drug screen pursuant to this section if the person:

(a) Is 65 years of age or older; or

(b) Submits proof satisfactory to the Division that he or she is currently participating in a program for the treatment of the abuse of controlled substances that has been approved by the Division. As a condition to the receipt of public assistance, the person who



1 *is exempt from submitting to an oral fluid drug screen pursuant to*
2 *this paragraph must submit to an oral fluid drug screen upon*
3 *completion of the program.*

4 *9. The Division shall not provide public assistance to a*
5 *person who is required to submit to an oral fluid drug screen*
6 *pursuant to this section if the person refuses to do so.*

7 **Sec. 8. 1.** *If a person submits to an oral fluid drug screen*
8 *pursuant to section 7 of this act and the result indicates the*
9 *presence of a controlled substance, the result must be confirmed*
10 *by an appropriate laboratory or testing facility before the Division*
11 *denies or terminates public assistance for that person.*

12 *2. The Division shall provide a person with an opportunity to*
13 *rebut the result of his or her oral fluid drug screen or urinalysis by*
14 *providing evidence satisfactory to the Division that the result was*
15 *erroneous, including, without limitation, that the result was a false*
16 *positive.*

17 *3. The Division shall keep confidential the results of an oral*
18 *fluid drug screen or a urinalysis submitted pursuant to section 7 of*
19 *this act. Such results may not be used in a criminal proceeding*
20 *against the person who submitted to the test.*

21 *4. As used in this section, "false positive" means the result of*
22 *an oral fluid drug screen or a urinalysis which erroneously*
23 *indicates the presence of a controlled substance.*

24 **Sec. 9. 1.** *On or before January 1 of each year, the Division*
25 *shall prepare a written report containing statistical data about:*

26 *(a) The number of oral fluid drug screens submitted to and the*
27 *number of urinalyses requested;*

28 *(b) The number of persons with a test result pursuant to*
29 *section 7 of this act which indicates the presence of a controlled*
30 *substance, reported separately for persons submitting to an oral*
31 *fluid drug screen or a urinalysis;*

32 *(c) The number of persons who participated in a program for*
33 *the treatment of the abuse of controlled substances pursuant to*
34 *section 7 of this act;*

35 *(d) The number of persons with a test result which indicates*
36 *the presence of a controlled substance after completing a program*
37 *for the treatment of the abuse of controlled substances pursuant to*
38 *section 7 of this act;*

39 *(e) The cost of providing for oral fluid drug screens and*
40 *urinalyses pursuant to section 7 of this act; and*

41 *(f) The number of persons who are denied public assistance*
42 *and the number of persons whose public assistance is terminated*
43 *pursuant to section 7 of this act.*

44 *2. The Division shall submit the report to:*



1 *(a) In each odd-numbered year, the Director of the Legislative*
2 *Counsel Bureau for transmittal to the next regular session of the*
3 *Legislature.*

4 *(b) In each even-numbered year, the Legislative Committee on*
5 *Health Care.*

6 **Sec. 10.** *The Administrator may adopt regulations to carry*
7 *out the provisions of sections 2 to 10, inclusive, of this act.*

