

Regular Session, 2012

HOUSE BILL NO. 380

BY REPRESENTATIVES MACK, BURFORD, HILL, HOFFMANN, AND POPE

TANF/FITAP: Provides for drug testing requirements for recipients of cash assistance in the Family Independence Temporary Assistance Program

1 AN ACT

2 To amend and reenact R.S. 46:460.10, relative to drug testing of adult recipients of cash  
3 assistance; to require participants to consent to possible random drug testing prior  
4 to receipt of cash benefits; to require random drug testing for twenty percent of  
5 recipients of cash assistance; to authorize the drug testing of more than twenty  
6 percent of all participants of the Family Independence Temporary Assistance  
7 Program under certain circumstances; to establish a cost savings program for drug  
8 testing; to provide for a determination of sufficiency of funding; to provide certain  
9 penalties for participants with positive test results for illegal drug use; to provide  
10 relative to the responsibility for the cost of drug testing; to require investigations  
11 under certain circumstances; to provide for an effective date; and to provide for  
12 related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. R.S. 46:460.10 are hereby amended and reenacted to read as follows:

15 §460.10. Drug testing for certain adult recipients of public assistance; legislative  
16 policy; procedures

17 A. The legislature hereby reaffirms the legitimate government function of  
18 promoting the safety and welfare of children and adults. The legislature declares that  
19 the best interests of a significant portion of the state's population are served by  
20 ensuring that they are free of the physical and mental impairments associated with

1 drug dependence. The legislature also affirms the importance of ensuring that  
2 Louisiana's citizens are ready to work, and in order for Louisiana's citizens to be  
3 work-ready, they must be free of drug dependence. The legislature further reaffirms  
4 its compelling interest in providing safeguards to eliminate the misappropriation of  
5 ~~entitlement~~ cash assistance benefits. The legislature hereby directs the secretary of  
6 the Department of Children and Family Services in consultation with the secretary  
7 of the Department of Health and Hospitals and the commissioner of administration  
8 to establish a mandatory drug testing program for ~~certain~~ twenty percent of adults in  
9 the ~~Temporary Assistance for Needy Families Block Grant Program~~ Family  
10 Independence Temporary Assistance Program (FITAP). The drug testing shall  
11 comply with standards utilized by the office of behavioral health of the Department  
12 of Health and Hospitals; however, in the event that it is determined that the Family  
13 Independence Temporary Assistance Program Drug Testing and Treatment Fund (the  
14 fund), as provided for in R.S. 46:460.11, has deposits in the fund sufficient to  
15 conduct testing of more than twenty percent of adults in FITAP, then the percentage  
16 of all adult FITAP participants tested shall be based on the adequacy of the fund;  
17 however, prior to drug testing more than twenty percent of adults in FITAP, the state  
18 shall be reimbursed twenty thousand dollars from the fund to be deposited into the  
19 state general fund to offset any state deficits. The determination of sufficient  
20 funding for the purposes of this Section shall be made by the secretaries of the  
21 Department of Children and Family Services, the Department of Health and  
22 Hospitals, and the commissioner of administration.

23 B.(1) Each participant in FITAP shall be asked to sign a written consent  
24 form that informs the participant that, in order to receive or to continue receiving  
25 cash assistance benefits, the participant shall consent to random drug testing to be  
26 administered by the Department of Children and Family Services according to the  
27 provisions of this Section. The form shall inform the participant that, with his  
28 signature, he agrees to be drug tested at any time as determined by the department  
29 while the participant is receiving cash assistance benefits. A participant who does

1 not sign the form granting consent to a drug test shall not be eligible to receive or to  
2 continue receiving cash assistance benefits.

3 (2) The secretary of the Department of Children and Family Services shall  
4 cause to be instituted a mandatory drug testing program for ~~certain~~ twenty percent  
5 of adult participants, to be determined by the secretary in consultation with the  
6 secretary of the Department of Health and Hospitals and the commissioner of  
7 administration, in the Temporary Assistance for Needy Families Block Grant  
8 Program, FITAP or its successor. The Department of Children and Family Services  
9 shall randomly select the participants to be drug tested according to a procedure  
10 established through rules and regulations promulgated according to the  
11 Administrative Procedure Act. No participant shall be tested if such testing is  
12 prohibited by federal law. No sanction shall be imposed on an adult participant if  
13 such sanction is prohibited by federal law. Such testing program shall provide  
14 procedural safeguards to ensure the protection of the constitutional rights of the  
15 program participants and provide that testing shall be done by state certified  
16 laboratories; however, in the event that it is determined that the Family Independence  
17 Temporary Assistance Program Drug Testing and Treatment Fund (the fund), as  
18 provided for in R.S. 46:460.11, has deposits in the fund sufficient to conduct testing  
19 of more than twenty percent of adults in FITAP, then the percentage of all adult  
20 FITAP participants tested shall be based on the adequacy of the fund; however, prior  
21 to drug testing more than twenty percent of adults in FITAP, the state shall be  
22 reimbursed twenty thousand dollars from the fund to be deposited into the state  
23 general fund to offset any state deficits. The determination of sufficient funding for  
24 the purposes of this Section shall be made by the secretaries of the Department of  
25 Children and Family Services, the Department of Health and Hospitals, and the  
26 commissioner of administration.

27 C. The required drug testing program shall require a participant to complete  
28 an education and rehabilitation program within ninety days, depending on  
29 availability and length of treatment, of upon the initial identification of such

1 participant as an illegal drug user verified by a positive test result as a prerequisite  
2 to continued receipt of benefits. A participant who fails to complete the required  
3 education and rehabilitation program in the allotted time shall be suspended from  
4 participation in the cash assistance program for a period of one year from the date  
5 of the positive drug screen or until satisfactory completion of the program. Further,  
6 the drug testing program shall provide for the suspension of participation in such  
7 ~~entitlement~~ cash assistance program for a period of one year from the date of the  
8 positive drug screen for a participant subsequently identified by a verified positive  
9 test result as an illegal drug user. The suspended participant shall be prohibited from  
10 reapplying for cash assistance until the entire suspension period has elapsed and the  
11 suspended participant has completed the reentry program required by this Section.  
12 ~~;~~ ~~however,~~ However, in no event shall participation in such ~~entitlement~~ cash  
13 assistance program be suspended while the participant is taking part in the education  
14 and rehabilitation program required to be completed within ninety days of the initial  
15 positive test result, or when the participant is actively engaged in treatment that  
16 exceeds ninety days, or until when an education and rehabilitation program is  
17 ~~available~~ unavailable to the participant. The secretary of the Department of Children  
18 and Family Services in conjunction with the secretary of the Department of Health  
19 and Hospitals and the commissioner of administration shall provide a program of  
20 education and rehabilitation for participants so identified as illegal drug users. Such  
21 program shall include regulations governing the reentry of a suspended recipient into  
22 the ~~entitlement~~ cash assistance program based on subsequent testing results and  
23 completion of education and rehabilitation programs. Such program shall also  
24 include the provision of inpatient services for any participant identified as an illegal  
25 drug user if it is determined that such inpatient services are necessary for successful  
26 rehabilitation.

27 D. The secretary of the Department of Children and Family Services in  
28 consultation with the secretary of the Department of Health and Hospitals and the  
29 commissioner of administration shall promulgate rules and regulations to implement

1 the provisions of this Section in accordance with the Administrative Procedure Act.  
2 Such rules and regulations shall provide that the cost of the initial testing of  
3 participants for the presence of illegal drugs and the treatment of such participants  
4 pursuant to the provisions of this Section shall be borne by the department or  
5 departments that grant the applicable public assistance. The cost associated with all  
6 subsequent drug screening of a participant pursuant to the provisions of this Section  
7 shall be borne by the participant.

8 E. The secretary of the Department of Children and Family Services shall  
9 promulgate rules and adopt regulations, in accordance with the Administrative  
10 Procedure Act, to implement the provisions of this Section. The implementation of  
11 the random drug testing of adult recipients of cash assistance shall be conducted in  
12 the most efficient and cost-effective manner possible.

13 E. F. The secretary shall prepare a written statistical report on the program  
14 and submit the report to the legislature on or before January 1, 1999, and annually  
15 thereafter.

16 G. The child welfare division of the department shall investigate, without  
17 exception, every case in which an applicant with children, who is otherwise eligible  
18 for FITAP benefits, is denied based on the failure to complete the required education  
19 and rehabilitation program or a subsequent positive drug screen as provided in this  
20 Section within seventy-two hours of the denial.

21 Section 2. This Act shall become effective on January 1, 2013.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Mack

HB No. 380

**Abstract:** Expands drug testing to 20% of adult recipients of public cash assistance. Establishes a cost savings program for a drug testing program.

Present law (R.S. 46:460.10(A)) provides for drug testing of certain adult recipients participating in the Temporary Assistance for Needy Families Block Grant (TANF). Allows the secretary of the Dept. of Children and Family Services (DCFS), in consultation with the

secretary of the Dept. of Health and Hospitals (DHH), and the commissioner of administration, to define which adult participants are subject to testing.

Proposed law retains present law but requires that 20% of adult recipients of the Family Independence Temporary Assistance Program (FITAP) be drug tested. Proposed law requires that drug testing comply with standards utilized by the office of behavioral health.

Proposed law requires reimbursement of \$20,000 to the state, from the fund, to be deposited into the state general fund prior to any additional drug testing above 20% of adult participants of FITAP.

Proposed law (R.S. 46:460.10(B)(1)) requires each participant of the FITAP program to sign a written consent form which informs the participant that, in order to receive or to continue receiving cash assistance benefits, the participant shall consent to random drug testing administered by DCFS. A participant who does not sign the form granting consent to a drug test shall not be eligible to receive or to continue receiving cash assistance.

Proposed law (R.S. 46:460.10(B)(2)) specifies that DCFS shall randomly select the participants to be drug tested according to a procedure established through the rules and regulations promulgated according to the Administrative Procedure Act.

Proposed law provides that if it is determined that the Family Independence Temporary Assistance Program Drug Testing and Treatment Fund (the fund), as provided for in present law (R.S. 46:460.11), has deposits sufficient to conduct testing of more than 20% of adults in FITAP, then the percentage of all adult FITAP participants tested will be based on the adequacy of the fund.

Proposed law provides that the determination of sufficient funding for the implementation of proposed law shall be made by the secretaries of DCFS, DHH, and the commissioner of administration.

Present law (R.S. 46:460.10(C)) requires a participant to complete an education and rehabilitation program upon the initial identification of such participant as an illegal drug user verified by a positive test result as a prerequisite to continued receipt of benefits. Also, requires the drug testing program to provide for the suspension of a participant from the entitlement program when he is subsequently identified by a verified positive test result as an illegal drug user. Further, prohibits the suspension of a participant from an entitlement program while he is taking part in the education and rehabilitation program or an education and rehabilitation program is unavailable to the participant.

Proposed law modifies present law by specifying that the required education and rehabilitation program must be completed within 90 days, pending availability, of a positive drug screen. Also, provides that a participant who fails to complete the required education and rehabilitation program in the allotted time will be suspended from participation in the cash assistance program for a period of one year from the date of the positive drug screen or until the satisfactory completion of the program. Proposed law provides that a participant who is subsequently identified by a verified positive test result as an illegal drug user will be suspended from participation in the cash assistance program for one year from the date of the positive drug screen. Also, requires the suspended participant to reapply for assistance after the suspension period and completion of the reentry program required by law. Proposed law also prohibits the suspension of a participant from the cash assistance program while the participant is taking part in the education and rehabilitation program required to be completed within 90 days of the initial positive test result, or when the participant is actively engaged in treatment that exceeds 90 days, or when an education and rehabilitation program is unavailable to the participant.

Present law (R.S. 46:460.10(D)) requires DCFS in consultation with DHH and the commissioner of administration to promulgate rules providing that the cost of testing for illegal drugs shall be borne by the department that grants the public assistance.

Proposed law retains present law and further requires that the costs associated with a participant's subsequent drug screening shall be borne by the participant.

Proposed law (R.S. 46:460.10(E)) requires the secretary of DCFS to create rules and regulations that comply with the Administrative Procedure Act, to implement proposed law. Also, requires that the implementation of the random drug testing program be conducted in the most efficient and cost-effective manner possible.

Present law (R.S. 46:460.10(F)) requires the annual preparation and submission of a written statistical report on the FITAP program.

Proposed law (R.S. 46:460.10(G)) requires that the DCFS child welfare division investigate cases in which a FITAP applicant with children is denied benefits based on the failure to complete the required education and rehabilitation program or a subsequent positive drug screen within 72 hours of the denial.

Effective Jan. 1, 2013.

(Amends R.S. 46:460.10)

#### Summary of Amendments Adopted by House

##### House Floor Amendments to the engrossed bill.

1. Made technical changes.
2. Required the costs associated with a FITAP participant's subsequent drug screen to be borne by the participant.
3. Required the child welfare division of DCFS to investigate cases in which a FITAP applicant with children is denied benefits based on the failure to complete the required education and rehabilitation program or a subsequent positive drug screen within 72 hours of the denial.