

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

HB 1289 - SB 1677

March 28, 2011

SUMMARY OF BILL: Requires the Department of Human Services (DHS) to implement a program of substance abuse testing for adults as a condition for public assistance eligibility. Prohibits an adult from receiving public assistance and unemployment benefits if the adult refuses to participate in the substance abuse screening program or if he or she tests positive for the presence of a controlled substance. Requires the testing to occur as an initial condition prior to receiving any benefits and then once for every subsequent year the adult person receives assistance. Prohibits test results from being admissible in any criminal proceeding without the consent of the person tested.

ESTIMATED FISCAL IMPACT:

Other Fiscal Impact – The Department of Labor and Workforce Development states that federal regulations prohibit implementing substance abuse testing as a condition for eligibility for unemployment compensation. According to DHS, federal regulations prohibit programs which provide public assistance benefits to use suspicionless substance abuse testing as a condition of eligibility. Imposing standards of eligibility for Food Stamp benefits that do not meet those established by the U.S. Department of Health and Human Services, are prohibited under 7 USC 2014(b). As a result, there will not be an impact on state and federal expenditures.

Assumptions:

- The Bureau of TennCare will not incur any fiscal impact as the proposed legislation does not apply to TennCare enrollees.
- Suspicionless drug testing of applicants for public assistance benefits has been held to be an unconstitutional search and seizure under the Fourth Amendment of the United States Constitution.
- According to DHS, Temporary Assistance for Needy Families (TANF) program would be excluded from the provisions of the proposed legislation due to the prohibition of federal law. According to the Department, a 2003 Federal Court of Appeals decision enjoined Michigan from conducting suspicionless drug testing (Marchwinski v. Howard). Implementing drug testing on TANF recipients would jeopardize \$213,000,000 of federal TANF funding.

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- Federal Food Stamp statute at 7 USC 2014(b) provides “No plan of operation submitted by a State agency shall be approved unless the standards of eligibility meet those established by the Secretary, and no State agency shall impose any other standards of eligibility as a condition for participating in the program.” DHS assumes that the Food Stamp program would be excluded from the provisions of the proposed legislation due to non-compliance with federal regulations. Implementing drug testing on Food Stamp recipients would jeopardize approximately \$1,900,000,000 of federal Food Stamp funding.
- According to the Department of Labor and Workforce Development, the United States Department of Labor (USDOL) has informed the Department that the proposed legislation is out of conformity with federal law. Any law that is passed that is deemed out of conformity by lawful authority with federal law shall be void and of no effect per Tenn. Code Ann. § 50-7-104(b).
- According to the USDOL statement, in a 1964 conformity proceeding, the Secretary of Labor concluded that several provisions of federal law require that unemployment compensation (UC) eligibility conditions must be related to “the fact or cause of unemployment.” Conditioning UC eligibility on willingness to submit to drug testing or drug testing results is not considered related to “the fact or cause of unemployment”.
- Further, Section 3304(a)(10) of the Federal Unemployment Tax Act provides that compensation shall not be denied to any individual by reason of cancellation of wage credits or total reduction of benefit rights for any cause other than discharge for misconduct connected with his work, fraud in connection with a claim for compensation, or receipt of disqualifying income.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

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