

110TH CONGRESS
2D SESSION

S. 3540

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 SENATE OF THE UNITED STATES

SEPTEMBER 23 (legislative day, SEPTEMBER 17), 2008

Mr. VITTER introduced the following bill; which was read twice and referred to the Committee on Finance

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 2008”.

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 2008, 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 INDIVIDUALS WHO TEST POSITIVE FOR ILLEGAL
 9 DRUG USE AND INDIVIDUALS CONVICTED OF
 10 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 2008;

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-

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

“(D) WAITING PERIOD AFTER DENIAL OF BENEFITS.—In the case of an individual who is denied assistance under subparagraph (C) because of failure to satisfy the requirements of such subparagraph, a State may not provide assistance to such individual under the State program funded under this part at any time during the 2-year period beginning on the date the individual is so denied.

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

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

“(F) LIMITATION ON WAIVER AUTHORITY.—The Secretary may not waive the provisions of this paragraph under section 1115.

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

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

“(ii) DRUG REHABILITATION OR TREATMENT PROGRAM.—The term ‘drug rehabilitation or treatment program’ means a program determined by the State to provide treatment that can lead to the rehabilitation of drug users, but only if such program complies with all applicable Federal, State, and local laws and regulations.

“(iii) DRUG-RELATED CRIME.—The 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.

