

SENATE BILL 287

O1
HB 585/11 – APP

2lr0770

By: **Senators Jennings and Shank**

Introduced and read first time: January 26, 2012

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Family Investment Program – Eligibility – Drug Testing**

3 FOR the purpose of requiring individuals applying for or receiving temporary cash
4 assistance benefits under the Family Investment Program to comply with
5 certain eligibility requirements related to drug testing; authorizing temporary
6 cash assistance benefits that have been terminated to resume under certain
7 circumstances; requiring an addictions specialist to notify the Family
8 Investment Program case manager if an applicant or a recipient does not
9 complete certain drug testing; requiring an addictions specialist to take certain
10 actions under certain circumstances and in a certain manner; authorizing
11 certain individuals to reapply for temporary cash assistance in a certain
12 manner; requiring a local department to reduce temporary cash assistance
13 benefits under certain circumstances; prohibiting a local department from
14 paying temporary cash assistance to certain applicants under certain
15 circumstances; requiring a local department to make temporary cash assistance
16 benefits payments to a third party payee or a compliant adult recipient under
17 certain circumstances; defining a certain term; and generally relating to
18 eligibility for the Family Investment Program and drug testing.

19 BY repealing and reenacting, without amendments,
20 Article – Criminal Law
21 Section 5–101(f)
22 Annotated Code of Maryland
23 (2002 Volume and 2011 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article – Human Services
26 Section 5–301, 5–308, 5–312, and 5–314
27 Annotated Code of Maryland
28 (2007 Volume and 2011 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Criminal Law

5–101.

(f) (1) “Controlled dangerous substance” means:

(i) a drug or substance listed in Schedule I through Schedule V;
or

(ii) an immediate precursor to a drug or substance listed in Schedule I through Schedule V that:

1. by regulation the Department designates as being the principal compound commonly used or produced primarily for use to manufacture a drug or substance listed in Schedule I through Schedule V;

2. is an immediate chemical intermediary used or likely to be used to manufacture a drug or substance listed in Schedule I through Schedule V; and

3. must be controlled to prevent or limit the manufacture of a drug or substance listed in Schedule I through Schedule V.

(2) “Controlled dangerous substance” does not include distilled spirits, wine, malt beverages, or tobacco.

Article – Human Services

5–301.

(a) In this subtitle the following words have the meanings indicated.

(B) “CONTROLLED DANGEROUS SUBSTANCE” HAS THE MEANING STATED IN § 5–101 OF THE CRIMINAL LAW ARTICLE.

[(b)] (C) “FIP” means the Family Investment Program.

[(c)] (D) “Nonprofit organization” means a religious, charitable, or volunteer organization that is exempt from taxation under § 501(c) of the Internal Revenue Code.

[(d)] (E) “Recipient” means each individual in a FIP case.

1 **[(e)] (F)** “Temporary cash assistance” means the cash assistance component
2 of the FIP that is funded wholly or partly through Title IV, Part A, of the Social
3 Security Act.

4 **[(f)] (G)** “Third party payee” means:

- 5 (1) an individual that the Department approves;
- 6 (2) a nonprofit organization;
- 7 (3) a for-profit organization; or
- 8 (4) a governmental unit, including a local department.

9 **[(g)] (H)** “Transitional assistance” means assistance provided to a recipient
10 whose temporary cash assistance has been terminated for noncompliance with FIP
11 requirements.

12 **[(h)] (I)** “Work activity” means:

- 13 (1) job search activity;
- 14 (2) subsidized employment in either the public or private sector;
- 15 (3) work experience;
- 16 (4) on-the-job training;
- 17 (5) community service;
- 18 (6) training directly related to employment; or
- 19 (7) education directly related to employment.

20 5–308.

21 (a) (1) A family may be eligible for assistance under this subtitle only if
22 the family includes:

23 (i) a minor child who resides with a custodial parent or other
24 adult caretaker who is a relative of the child; or

25 (ii) a pregnant individual.

26 (2) Assistance shall be provided to an applicant or recipient under this
27 subtitle only if the applicant or recipient:

1 (i) resides in the State at the time of application for assistance;

2 (ii) if applicable:

3 1. has applied for child support services with the
4 appropriate local child support enforcement office at the time of application for
5 assistance; and

6 2. complies with the requirements of the local child
7 support enforcement office;

8 (iii) has engaged in job search activities as requested by the
9 Department;

10 (iv) participates in work activity under this subtitle; [and]

11 **(V) 1. SUBMITS TO TESTING, AS PROVIDED BY THE**
12 **DEPARTMENT, TO DETERMINE USE OF A CONTROLLED DANGEROUS**
13 **SUBSTANCE; AND**

14 **2. COMPLIES WITH THE REQUIREMENTS UNDER §§**
15 **5-312(E) AND 5-314 OF THIS SUBTITLE; AND**

16 **[(v)] (VI)** meets all other FIP requirements that the Secretary
17 establishes by regulation.

18 (b) (1) An individual may not be required to meet the work activity
19 requirement under subsection (a)(2)(iv) of this section if the individual is exempt
20 under criteria the Secretary establishes.

21 (2) The criteria shall include exemptions for:

22 (i) adults who are required to care for a child who is a recipient
23 under the age of 1 year; and

24 (ii) subject to paragraph (3) of this subsection, adults and
25 children who are recipients and who are severely disabled.

26 (3) An individual's exemption because of severe disability is limited to
27 12 months unless:

28 (i) the individual applies for Supplemental Security Income;
29 and

30 (ii) the application is approved, pending, or on appeal.

1 (c) Subject to the State budget, a legal immigrant is entitled to assistance
2 under this subtitle if the immigrant:

3 (1) meets FIP eligibility requirements under this subtitle and any
4 other requirements imposed by the State; and

5 (2) (i) arrived in the United States before August 22, 1996; or

6 (ii) arrived in the United States on or after August 22, 1996 and
7 is not eligible for federally funded cash assistance.

8 5–312.

9 (a) This section is not intended to create an incentive for individuals to seek
10 temporary cash assistance benefits instead of employment.

11 (b) A local department shall provide temporary cash assistance to an
12 applicant or recipient only if:

13 (1) the applicant or recipient meets the requirements for participation
14 in the FIP set forth in § 5–308 of this subtitle;

15 (2) the applicant or recipient assigns to the State all right, title, and
16 interest in support, for the period that the family receives temporary cash assistance,
17 from any other person that the applicant or recipient has on behalf of any intended or
18 potential recipient for whom the applicant or recipient is applying for or receiving
19 assistance; and

20 (3) in the case of an applicant or recipient who is a minor parent, the
21 applicant or recipient lives:

22 (i) with a parent, legal guardian, custodian, or other adult
23 relative who will be the payee of the minor parent;

24 (ii) in an adult-supervised group living arrangement that
25 provides a protective payee and:

26 1. there is no available parent, legal guardian,
27 custodian, or other adult relative with whom the minor parent can live;

28 2. the minor parent or child would be subject to physical
29 or emotional harm, sexual abuse, or neglect in the home of any available adult
30 relative; or

31 3. a social service worker finds that living with any
32 available adult relative would not be in the best interest of the minor parent or child;
33 or

1 (iii) independently, if a social service worker confirms that the
2 physical safety or emotional health of the minor parent or child would otherwise be in
3 jeopardy.

4 (c) A recipient who meets the requirements of the FIP is entitled to
5 temporary cash assistance benefits.

6 (d) In determining the eligibility for and the amount of temporary cash
7 assistance to be provided to an applicant or recipient who is a legal immigrant, the
8 income and resources of the applicant or recipient shall include, for the period of time
9 established by federal law, the income and resources of any sponsor who executed an
10 affidavit of support in accordance with 8 U.S.C. § 1183a on behalf of the legal
11 immigrant.

12 (e) (1) The Secretary shall adopt regulations that establish a schedule of
13 reductions and terminations of temporary cash assistance for noncompliance with FIP
14 requirements.

15 (2) (i) If a recipient is found to be in noncompliance with FIP
16 requirements, a caseworker shall investigate the reasons for noncompliance.

17 (ii) The investigation, to the extent resources allow, shall
18 include personal contact with the family of the recipient.

19 (3) The Secretary may not reduce or terminate temporary cash
20 assistance to a family until 30 days after the day on which the first written notice of
21 noncompliance was sent to the recipient.

22 (4) For noncompliance with a FIP requirement other than a work
23 activity **OR DRUG TESTING**, temporary cash assistance shall resume on compliance
24 with the FIP requirement.

25 (5) For noncompliance with a work activity, temporary cash assistance
26 shall resume in the following manner:

27 (i) for the first instance of noncompliance, temporary cash
28 assistance shall resume immediately on compliance;

29 (ii) for the second instance of noncompliance, temporary cash
30 assistance shall resume after 10 days of compliance with the work activity; and

31 (iii) for each subsequent instance of noncompliance, temporary
32 cash assistance shall resume after 30 days of compliance with a work activity.

33 **(6) FOR NONCOMPLIANCE WITH DRUG TESTING, TEMPORARY**
34 **CASH ASSISTANCE SHALL RESUME IN THE FOLLOWING MANNER:**

(I) IF A RECIPIENT TESTS NEGATIVE FOR THE ABUSE OF A CONTROLLED DANGEROUS SUBSTANCE, TEMPORARY CASH ASSISTANCE SHALL RESUME IMMEDIATELY ON COMPLIANCE; AND

(II) IF A RECIPIENT TESTS POSITIVE FOR THE ABUSE OF A CONTROLLED DANGEROUS SUBSTANCE, TEMPORARY CASH ASSISTANCE SHALL RESUME:

**1. AFTER 90 DAYS, IF THE APPROPRIATE DRUG ABUSE TREATMENT PROGRAM IS UNAVAILABLE AND THE INDIVIDUAL SUBMITS TO REPEAT DRUG TESTING AND THE RESULT OF THE DRUG TEST IS NEGATIVE;
OR**

2. AFTER THE RECIPIENT ENROLLS IN AND SUCCESSFULLY COMPLETES THE APPROPRIATE DRUG ABUSE TREATMENT PROGRAM.

[(6)] (7) If temporary cash assistance is reduced or terminated under this subsection, a recipient shall retain eligibility for medical assistance and food stamps, as long as the recipient meets the medical assistance and food stamp program requirements.

(f) (1) After termination of temporary cash assistance under this section, a recipient may receive transitional assistance.

(2) If a caseworker determines that transitional assistance is appropriate, the FIP benefit that would have been paid to the recipient shall be paid instead to a third party payee on behalf of the recipient for a period of up to 3 months.

(3) The caseworker of a recipient, in conjunction with the recipient and subject to the approval of the Secretary, shall select a third party payee described in paragraph (2) of this subsection.

(4) The third party payee shall provide transitional assistance to the recipient in one or more of the following forms:

(i) counseling;

(ii) housing;

- (iii) child care;

- (iv) household supplies and equipment;

1 (v) direct assistance other than a cash payment; and

2 (vi) any other noncash assistance that may be necessary to
3 assist the recipient to make the transition from welfare.

4 (5) A local department may pay an administrative fee to a third party
5 payee to cover the administrative costs of the third party payee for providing the
6 services described in paragraph (4) of this subsection.

7 (6) The funds provided through transitional assistance may not be
8 used to further sectarian religious instruction.

9 (7) The Secretary shall adopt regulations specifying the selection
10 criteria for third party payees under this subsection.

11 (8) A recipient who has received transitional assistance may reapply
12 for the FIP benefit and the benefit shall be furnished with reasonable promptness to
13 all eligible individuals.

14 5-314.

15 (a) In this section, "addictions specialist" means an addictions specialist who
16 is located on-site at a local department.

17 (b) (1) An addictions specialist shall assess the need of any adult or minor
18 parent applicant or recipient for substance abuse treatment:

19 (i) at the initial application for temporary cash assistance; or

20 (ii) when considered appropriate by the FIP case manager of the
21 local department.

22 (2) The addictions specialist shall screen the applicant or recipient to
23 expose potential barriers that the applicant or recipient may have in obtaining
24 employment such as a substance abuse problem.

25 (3) The addictions specialist shall inform each adult or minor parent
26 applicant or recipient of the requirements of FIP regarding substance abuse
27 treatment.

28 (4) **[If] THE ADDICTIONS SPECIALIST SHALL NOTIFY THE FIP**
29 **CASE MANAGER IF** the applicant or recipient does not complete:

30 **(I) THE DRUG TESTING REQUIRED UNDER § 5-308(A)(2)(V)**
31 **OF THIS SUBTITLE; AND**

(II) the screening required under paragraph (2) of this subsection[, the addictions specialist shall notify the FIP case manager].

(c) (1) If the **DRUG TESTING REQUIRED UNDER § 5-308(A)(2)(V) OF THIS SUBTITLE OR THE** screening performed by the addictions specialist reveals that an applicant or recipient has a substance abuse problem, the addictions specialist shall:

(i) conduct, or refer for, an assessment of the applicant's or recipient's substance abuse problem and, if appropriate, determine placement for treatment and related support services;

(ii) refer the applicant or recipient for appropriate substance abuse treatment and related support services;

(iii) obtain the signature of the applicant or recipient on a form consenting to the release of confidential substance abuse treatment information;

(iv) forward the consent form to the appropriate substance abuse treatment provider; and

(v) obtain any necessary treatment information from the substance abuse treatment provider.

(2) (i) The substance abuse treatment provider shall notify the addictions specialist of the ongoing treatment status of the applicant or recipient.

(ii) The addictions specialist shall notify the FIP case manager if an applicant or recipient:

1. fails to complete the assessment required under paragraph (1)(i) of this subsection;

2. fails to sign the consent form required under paragraph (1)(iii) of this subsection;

3. is referred for appropriate substance abuse treatment;

4. is awaiting the availability of appropriate treatment;

5. fails to enroll or maintain enrollment with an available substance treatment provider or to complete the treatment protocol;

6. is enrolled in a treatment program; or

7. successfully completes treatment.

(iii) The addictions specialist shall also notify the FIP case manager regarding the ongoing treatment status of the applicant or recipient.

(d) **[An] EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, AN** adult or minor parent applicant or recipient who complies with the substance abuse treatment requirements of the FIP:

(1) shall receive a full temporary cash assistance benefit as long as the applicant or recipient meets the other temporary cash assistance eligibility requirements; and

(2) may be exempt from the work activity requirements for a period of time determined by the FIP case manager in consultation with the addictions specialist.

(E) (1) AN ADULT OR MINOR PARENT APPLICANT WHO TESTS POSITIVE FOR THE ABUSE OF A CONTROLLED DANGEROUS SUBSTANCE MAY REAPPLY FOR TEMPORARY CASH ASSISTANCE:

(I) AFTER 90 DAYS, IF THE APPROPRIATE DRUG ABUSE TREATMENT PROGRAM IS UNAVAILABLE AND THE INDIVIDUAL SUBMITS TO REPEAT DRUG TESTING AND THE RESULT OF THE DRUG TEST IS NEGATIVE; OR

(II) AFTER THE APPLICANT ENROLLS IN AND SUCCESSFULLY COMPLETES THE APPROPRIATE DRUG ABUSE TREATMENT PROGRAM.

(2) IF AN ADULT OR MINOR PARENT RECIPIENT TESTS POSITIVE FOR THE ABUSE OF A CONTROLLED DANGEROUS SUBSTANCE, TEMPORARY CASH ASSISTANCE SHALL RESUME AS PROVIDED UNDER § 5-312(E)(6)(II) OF THIS SUBTITLE.

[(e)] (F) An adult or minor parent applicant or recipient is not in compliance with FIP requirements if the FIP case manager receives notice from the addictions specialist that the applicant or recipient:

(1) fails to complete:

(I) the DRUG TESTING REQUIRED UNDER § 5-308(A)(2)(V) OF THIS SUBTITLE; AND

(II) THE screening or assessment required under subsections (b)(2) and (c)(1)(i) of this section;

1 (2) fails to sign the consent form required under subsection (c)(1)(iii) of
2 this section; or

3 (3) is referred for appropriate and available substance abuse
4 treatment by the addictions specialist but fails to enroll or to maintain active
5 enrollment in the treatment program or complete the treatment protocol.

6 **[(f)] (G)** After the FIP case manager receives a notice under subsection **[(e)]**
7 **(F)** of this section, the local department shall:

8 (1) send a denial notice to the adult or minor parent applicant that:

9 (i) states:

- 10 1. that the applicant has not met FIP requirements;
- 11 2. the specific reason why the applicant is not eligible for
12 FIP; and
- 13 3. that if the applicant fails to fulfill the requirements on
14 or before the 30th work day after the application for temporary cash assistance was
15 filed, the application is denied; and

16 (ii) notifies the applicant of the applicant's right to appeal and
17 the procedures for filing an appeal; and

18 (2) separately determine eligibility for medical assistance and food
19 stamps.

20 **[(g)] (H)** After the FIP case manager receives a notice under subsection **[(e)]**
21 **(F)** of this section, the local department shall send a notice to the adult or minor
22 parent recipient that:

23 (1) identifies the recipient who is not in compliance with FIP
24 requirements;

25 (2) states the specific reason why that recipient is not in compliance
26 with FIP requirements; and

27 (3) states that 30 days after the date of the notice:

28 (i) the temporary cash assistance benefits will be reduced by
29 that increment in cash benefits attributable to the noncompliant recipient; and

30 (ii) the remainder of the cash benefits for the child or children in
31 the FIP case will be paid to a third party payee or a compliant adult recipient; and

(4) notifies the recipient of the recipient's right to appeal and the procedures for filing an appeal.

[(h)] (I) (1) The local department shall reduce the temporary cash assistance benefits of an adult or minor parent recipient and pay the remainder of the cash benefits to a third party payee or a compliant adult recipient as described in subsection **[(g)] (H)** of this section, if:

(i) the recipient fails to complete **DRUG TESTING, AS REQUIRED UNDER § 5-308(A)(2)(V) OF THIS SUBTITLE AND** a substance abuse screening or assessment by an addictions specialist, as required under subsections (b)(2) and (c)(1)(i) of this section; or

(ii) the required **DRUG TESTING**, screening, and assessment or the results of any follow-up diagnostic testing or treatment reveal that the recipient is a substance abuser and the recipient refuses to enroll or maintain enrollment in available and appropriate substance abuse treatment.

(2) **(I) [The] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE** local department shall continue to make temporary cash assistance benefits payments to a third party payee or a compliant adult recipient until the local department receives notice from the addictions specialist that the recipient is actively enrolled, as defined by the Alcohol and Drug Abuse Administration, in the appropriate substance abuse treatment indicated by the addictions specialist.

(II) FOR A RECIPIENT WHO TESTS POSITIVE FOR THE ABUSE OF A CONTROLLED DANGEROUS SUBSTANCE, THE LOCAL DEPARTMENT SHALL CONTINUE TO MAKE TEMPORARY CASH ASSISTANCE BENEFITS PAYMENTS TO A THIRD PARTY PAYEE OR A COMPLIANT ADULT RECIPIENT UNTIL THE LOCAL DEPARTMENT RECEIVES NOTICE FROM THE ADDICTIONS SPECIALIST THAT THE RECIPIENT HAS ENROLLED IN AND SUCCESSFULLY COMPLETED, AS DEFINED BY THE ALCOHOL AND DRUG ABUSE ADMINISTRATION, THE APPROPRIATE DRUG ABUSE TREATMENT PROGRAM INDICATED BY THE ADDICTIONS SPECIALIST.

[(i)] (J) [The] EXCEPT AS PROVIDED IN SUBSECTION (K) OF THIS SECTION, THE local department may not deny an adult or minor parent applicant's temporary cash assistance benefit or reduce an adult or minor parent recipient's temporary cash assistance benefit as described under subsections **[(f)] (G)** and **[(g)] (H)** of this section, if the applicant or recipient:

(1) receives the screening and assessment required under subsections (b)(2) and (c)(1)(i) of this section, and the screening and assessment or the results of any follow-up diagnostic testing or treatment reveal that the applicant or recipient is a substance abuser; and

1 (2) agrees to participate in appropriate substance abuse treatment, as
2 determined by the addictions specialist, but the appropriate substance abuse
3 treatment is not available.

4 **(K) (1) THE LOCAL DEPARTMENT SHALL DENY THE TEMPORARY**
5 **CASH ASSISTANCE BENEFIT OF AN ADULT OR MINOR PARENT APPLICANT IF THE**
6 **APPLICANT TESTS POSITIVE FOR THE ABUSE OF A CONTROLLED DANGEROUS**
7 **SUBSTANCE.**

8 **(2) THE LOCAL DEPARTMENT SHALL MAKE TEMPORARY CASH**
9 **ASSISTANCE BENEFITS PAYMENTS TO A THIRD PARTY PAYEE OR A COMPLIANT**
10 **ADULT RECIPIENT IF THE RECIPIENT TESTS POSITIVE FOR THE ABUSE OF A**
11 **CONTROLLED DANGEROUS SUBSTANCE:**

12 **(I) AFTER 90 DAYS, IF THE APPROPRIATE DRUG ABUSE**
13 **TREATMENT PROGRAM IS UNAVAILABLE AND THE INDIVIDUAL SUBMITS TO**
14 **REPEAT DRUG TESTING AND THE RESULT OF THE DRUG TEST IS NEGATIVE; OR**

15 **(II) AFTER THE RECIPIENT ENROLLS IN AND SUCCESSFULLY**
16 **COMPLETES THE APPROPRIATE DRUG ABUSE TREATMENT PROGRAM.**

17 **[(j)] (L)** The denial or reduction of temporary cash assistance under this
18 section does not affect an adult or minor parent applicant or recipient's eligibility for
19 medical assistance and food stamps, as long as the applicant or recipient meets the
20 medical assistance and food stamp program requirements.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2012.