

## **BILL ANALYSIS**

Senate Research Center

S.B. 11  
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Health & Human Services  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Temporary Assistance for Needy Families (TANF) program provides low-income families with financial assistance and employment programs to help recipients find jobs that will allow them to be self-sufficient. As part of receiving TANF benefits, all adult recipients must currently sign a personal responsibility agreement not to use or sell illegal drugs. Federal law allows states to drug test TANF applicants and sanction those who fail. Texas currently does not require drug testing for TANF applicants.

S.B. 11 requires an adult TANF applicant, and a minor parent if he or she is the head of his or her household, to submit to a controlled substance use screening assessment. If the screening assessment indicates good cause to suspect the person of controlled substance use, the individual will be required to submit to a drug test. S.B. 11 disqualifies certain applicants who test positive for drug use and provides certain exceptions for individuals that participate in substance abuse programs.

As proposed, S.B. 11 amends current law relating to the administration and operation of the Temporary Assistance for Needy Families (TANF) program.

[**Note:** While the statutory reference in this bill is to the Texas Department of Human Services (TDHS), the following amendments affect the Health and Human Services Commission, as the successor agency to TDHS.]

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission (executive commissioner) in SECTION 1.01 (Section 31.0321, Human Resources Code) of this bill.

Rulemaking authority previously granted to the Texas Department of Human Services (TDHS) is transferred to the executive commissioner and modified in SECTION 2.01 (Section 31.0033, Human Resources Code) of this bill.

Rulemaking authority previously granted to TDHS is transferred to the Texas Workforce Commission (TWC) in SECTION 2.03 (Section 31.012, Human Resources Code) of this bill.

Rulemaking authority expressly granted to TWC is restricted in SECTION 2.03 (Section 31.012, Human Resources Code) of this bill.

Rulemaking authority previously granted to TDHS is transferred to the executive commissioner in SECTION 2.04 (Section 31.014, Human Resources Code) of this bill.

Rulemaking authority previously granted to the executive commissioner is rescinded in SECTION 2.05 (Section 31.0126, Human Resources Code) of this bill.

Rulemaking authority previously granted to TDHS is rescinded in SECTION 4.02 (Section 31.0065, Human Resources Code) and SECTION 5.02 (Section 31.0031, Human Resources Code) of this bill.

Rulemaking authority previously granted to TDHS, TWC, and the Health and Human Services Commission is transferred to TWC and the executive commissioner in SECTION 4.03 (Section 31.0066, Human Resources Code) of this bill.

Rulemaking authority is expressly granted to TWC and the executive commissioner in SECTION 4.04 (Section 31.0067, Human Resources Code) and SECTION 4.06 of this bill.

## **SECTION BY SECTION ANALYSIS**

### ARTICLE 1. DRUG SCREENING AND TESTING OF CERTAIN TANF APPLICANTS AND RECIPIENTS

SECTION 1.01. Amends Subchapter B, Chapter 31, Human Resources Code, by adding Section 31.0321, as follows:

Sec. 31.0321. DRUG SCREENING AND TESTING; ELIGIBILITY. (a) Defines "commission" and "controlled substance" in this section.

(b) Requires each adult applicant for financial assistance benefits, including an applicant applying solely on behalf of a child, who initially applies for those benefits or who applies for the continuation of those benefits to submit to a controlled substance use screening assessment to establish the applicant's or the child's eligibility for the benefits, except as provided in Subsections (f) and (g). Requires that, in addition, each minor parent who is the head of household submit to a controlled substance use screening assessment on the initial application for financial assistance benefits and on any application for the continuation of those benefits to establish the minor's eligibility for the benefits.

(c) Requires a person whose controlled substance use screening assessment conducted under this section indicates good cause to suspect the person of controlled substance use to submit to a drug test to establish the eligibility of the person and the person's family for financial assistance benefits.

(d) Provides that a person, except as provided in Subsection (e), whose drug test conducted under this section indicates the presence in the person's body of a controlled substance not prescribed for the person by a health care practitioner is ineligible for financial assistance benefits for the person and the person's family for a period of 12 months beginning on the first day of the month after the month in which the drug test was administered.

(e) Authorizes a person who is denied financial assistance benefits because of the results of a drug test conducted under this section to reapply for financial assistance benefits six months after the first day of the month after the month in which the drug test was administered if the person provides proof of the person's successful completion of or current enrollment in a substance abuse treatment program. Requires a person reapplying for benefits to submit to a drug test as required by Subsection (f), regardless of whether the person is continuing to receive substance abuse treatment.

(f) Requires a person who is denied financial assistance benefits because of the results of a drug test conducted under this section to submit to a drug test, without first submitting to a controlled substance use screening assessment, at the time of any reapplication for financial assistance benefits and on any application for the continuation of those benefits to establish the eligibility of the person and the person's family for the benefits.

(g) Requires a person who has been convicted of a felony drug offense to submit to a drug test, without first submitting to a controlled substance use screening assessment, at the time of an initial application for financial assistance benefits

and on any application for the continuation of those benefits to establish eligibility of the person's family for the benefits.

(h) Provides that a person and a person's family are permanently ineligible for financial assistance benefits if the person is denied eligibility for benefits three times because of the results of a drug test conducted under this section.

(i) Requires the Health and Human Services Commission (HHSC), before denying financial assistance benefits under this section, to notify the person who submitted to a drug test of the results of the test and HHSC's proposed determination of ineligibility and to confirm the results of the drug test through a second drug test or other appropriate method.

(j) Requires HHSC to use the most efficient and cost-effective controlled substance use screening assessment tool that HHSC and the Department of State Health Services (DSHS) can develop based on validated controlled substance use screening assessment tools and to pay the cost of any controlled substance use screening assessment or drug test administered under this section out of the federal Temporary Assistance for Needy Families (TANF) block grant funds.

(k) Requires HHSC to report to the Department of Family and Protective Services for use in an investigation conducted under Chapter 261 (Investigation of Report of Child Abuse or Neglect), Family Code, if applicable, a person whose drug test conducted under this section indicates the presence in the person's body of a controlled substance not prescribed for the person by a health care practitioner.

(l) Requires the executive commissioner of HHSC (executive commissioner) to adopt rules implementing this section.

SECTION 1.02. (a) Provides that Section 31.0321, Human Resources Code, as added by this Act, applies to:

(1) an adult applicant, including an applicant applying solely on behalf of a child, who initially applies for financial assistance benefits under Chapter 31, Human Resources Code, on or after the effective date of this Act;

(2) a minor parent who is the head of household who initially applies for financial assistance benefits under Chapter 31, Human Resources Code, on or after the effective date of this Act;

(3) an adult applicant, including an applicant applying solely on behalf of a child, who applies for the continuation of financial assistance benefits under Chapter 31, Human Resources Code, on or after the effective date of this Act; and

(4) a minor parent who is the head of household who applies for the continuation of financial assistance benefits under Chapter 31, Human Resources Code, on or after the effective date of this Act.

(b) Provides that, except as provided by Subsections (a)(3) and (4) of this section, an adult applicant, including an applicant applying solely on behalf of a child, and a minor parent who is the head of household who applied for financial assistance benefits under Chapter 31, Human Resources Code, before the effective date of this Act are governed by the law in effect when the person applied for financial assistance benefits, and that law is continued in effect for that purpose.

## ARTICLE 2. MANDATORY PARTICIPATION IN TANF EMPLOYMENT PROGRAMS BY CERTAIN PERSONS

SECTION 2.01. Amends Section 31.0033(d), Human Resources Code, to require the executive commissioner, rather than the Texas Department of Human Services (TDHS), by rule to

establish criteria for good cause failure to cooperate and guidelines for what constitutes a good faith effort on behalf of a recipient under this section, except that the Texas Workforce Commission (TWC) is required to establish criteria for good cause failure to cooperate with regard to work or employment activities in accordance with Section 31.012(b).

SECTION 2.02. Amends the heading to Section 31.012, Human Resources Code, to read as follows:

Sec. 31.012. MANDATORY WORK OR PARTICIPATION IN EMPLOYMENT ACTIVITIES.

SECTION 2.03. Amends Section 31.012, Human Resources Code, by amending Subsections (a), (b), (c), (d), and (e) and adding Subsections (c-1) and (g), as follows:

(a) Requires that, except as provided by Subsections (c) and (g), HHSC, rather than TDHS, requires that, during any one-month period in which an adult is receiving or the child of a nonrecipient parent is receiving financial assistance under this chapter, the adult or nonrecipient parent is required to during that period:

(1) work not less than 30 hours a weeks; or

(2) participate for not less than 20 hours a week in an activity established under a TANF employment program under Part A, Subchapter IV, Social Security Act (42 U.S.C. Section 601 et seq.), rather than under the job opportunities and basic skills (JOBS) training program under Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682).

(b) Requires TWC, rather than TDHS, by rule to establish criteria for good cause failure to cooperate and for notification procedures regarding participation in work or employment activities under this section.

(c) Provides that a person providing care for a family member with a disability who lives in the person's home and requires the person's presence is not required to participate in a program under this section, rather than a person who is a caretaker of a physically or mentally disabled child who requires the caretaker's presence is not required to participate in a program under this section. Requires TWC, rather than TDHS, notwithstanding Section 31.0035(b), rather than Sections 31.0035(b) and 32.0255(b) (relating to time limits on transitional medical assistance), to provide an eligible person six months of transitional benefits in addition to the limit prescribed by Section 31.0065. Makes nonsubstantive changes.

(c-1) Prohibits the executive commissioner from adopting rules that provide exceptions to a person's required participation in work or employment activities that are in addition to the exceptions provided by Subsections (c) and (g), notwithstanding Section 531.0055 (Executive Commissioner: General Responsibility for Health and Human Service Agencies), Government Code.

(d) Requires that a state program operated under this section be administered by the division of workforce development of TWC, rather than be administered by that division when the program is transferred to TWC.

(e) Transfers from TDHS to TWC requirements set forth in this subsection regarding allowing a person to complete participation and the provision of child care.

(g) Provides that a nonrecipient parent who receives Supplemental Security Income (SSI) benefits under 42 U.S.C. Section 1381 et seq. is not subject to this section's requirements. Authorizes TWC to provide services to the nonrecipient parent under this chapter in accordance with HHSC rules.

SECTION 2.04. Amends Section 31.014(a), Human Resources Code, as follows:

(a) Requires HHSC, rather than TDHS, to provide financial assistance in accordance with rules adopted by the executive commissioner, rather than by TDHS rules, to a two-parent family if the primary wage earner parent, other than a nonrecipient parent described by Section 31.012(g), is registered with a TANF program, rather than a JOBS program, or is registered with TWC, rather than the Texas Employment Commission.

SECTION 2.05. Repealers: Sections 31.0126(c) (relating to certain requirements of the executive commissioner in adopting certain rules) and 31.014(c) (relating to an exemption from a requirement for an adult caretaker of a child younger than three), Human Resources Code.

SECTION 2.06. Provides that Section 31.012, Human Resources Code, as amended by this Act, applies to a person receiving financial assistance benefits under Chapter 31, Human Resources Code, including a nonrecipient parent, as defined by Section 31.0021, Human Resources Code, on or after the effective date of this Act, regardless of the date the determination of eligibility for those benefits was made.

### ARTICLE 3. USE OF TANF BENEFITS

SECTION 3.01. Amends Section 31.0355, Human Resources Code, by adding Subsection (c-1), to require a retailer who accepts payment for goods and services through the electronic benefits transfer (EBT) system to ensure that financial assistance benefits are not used to purchase goods and services the purchase of which is not authorized under this section or rules adopted under this section, including alcoholic beverages, tobacco products, lottery tickets, adult entertainment, firearms, ammunition, and bingo.

### ARTICLE 4. TANF TIME LIMITS

SECTION 4.01. Amends Section 31.0035(b), Human Resources Code, to transfer from TDHS to TWC authorization to provide child-care services during a certain period, except as provided by Section 31.012(c), Human Resources Code.

SECTION 4.02. Amends Section 31.0065, Human Resources Code, as follows:

Sec. 31.0065. **TIME-LIMITED BENEFITS.** (a) Transfers from TDHS to HHSC the authority to provide financial assistance under this chapter only in accordance with the time limits specified by this section and provides that this authority is subject to exemptions adopted under Section 31.0067. Deletes existing text authorizing TDHS by rule to provide for exceptions to time limits in cases of severe personal hardship or community economic factors preventing employment or if the state is unable to provide support services.

(b) Requires HHSC, rather than TDHS, to limit financial assistance and requires that financial assistance provided to a person or a person's family be limited to a cumulative total of 36 months of financial assistance benefits and 12 months of transitional benefits. Deletes existing text requiring that financial assistance and transitional benefits be distributed in accordance with a specified schedule.

(c) Provides that the computation of time limits under Subsection (b) begins when the person begins receiving financial assistance. Deletes existing text of Subsection (c) relating to requiring TDHS to perform an in-depth assessment of the needs of certain recipients and relating to when the period of 36 cumulative months of financial assistance and 12 months of transitional benefits for a cooperative recipient begins.

Deletes existing Subsection (d) designation and existing text relating to the commencement of the computation of time limits of financial assistance and transitional benefits to an adult or teen parent recipient.

Deletes existing Subsection (e) relating to the requirements set forth for TDHS for the implementation of the time-limited benefits program.

Deletes existing Subsection (f) relating to information TDHS is required to consider if imposing time-limited benefits on an individual.

SECTION 4.03. Amends Section 31.0066, Human Resources Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires TWC and the executive commissioner, rather than TDHS, TWC, and HHSC, to jointly adopt rules prescribing circumstances that constitute a hardship for the purposes of an exemption from the application of time limits imposed by federal law on the receipt of benefits.

(c) Requires that the rules include guidelines to address the continued participation in work or unemployment activities required under Section 31.012 by recipients of financial assistance exempted from the application of time limits imposed by federal law.

SECTION 4.04. Amends Subchapter A, Chapter 31, Human Resources Code, by adding Section 31.0067, as follows:

Sec. 31.0067. **HARDSHIP EXEMPTIONS FROM STATE TIME LIMITS.** (a) Requires TWC and the executive commissioner to jointly adopt rules prescribing circumstances that constitute a hardship for purposes of exempting a recipient of financial assistance from the application of time limits imposed by Section 31.0065 on the receipt of benefits.

(b) Requires that the rules include a broad range of circumstances that reasonably prevent recipients of financial assistance from becoming self-supporting before expiration of the period specified by Section 31.0065.

(c) Requires that the rules include guidelines to address the continued participation in work or employment activities required under Section 31.012 by recipients of financial assistance exempted from the application of time limits imposed by Section 31.0065.

SECTION 4.05. Amends Section 32.0255(b), Human Resources Code, to make a nonsubstantive change.

SECTION 4.06. Requires TWC and the executive commissioner to adopt the rules required by Section 31.0066, Human Resources Code, as amended by this Act, and Section 31.0067, Human Resources Code, as added by this Act, not later than December 1, 2013.

SECTION 4.07. Provides that Section 31.0065, Human Resources Code, as amended by this Act, applies to a person receiving financial assistance benefits under Chapter 31, Human Resources Code, on or after January 1, 2014, regardless of the date the determination of eligibility for those benefits was made.

## ARTICLE 5. TANF RESPONSIBILITY AGREEMENTS

SECTION 5.01. Amends Section 31.0031, Human Resources Code, by amending Subsections (a), (d), and (g) and adding Subsection (i), as follows:

(a) Requires HHSC, rather than TDHS, to require each teen adult recipient and each teen parent recipient who is the head of household to sign a bill of responsibilities. Makes conforming changes.

(d) Requires that the responsibility agreement require that:

(1) the parent of a dependent child cooperate with HHSC, rather than TDHS, and the Title IV-D agency if necessary to establish paternity of the dependent child and to establish or enforce child support;

(2) Makes no changes to this subdivision;

(3) each adult recipient or teen parent recipient who has completed the requirements regarding school attendance in Subdivision (6) not voluntarily terminate certain paid employment without good cause in accordance with rules adopted by TWC, rather than TDHS;

(4) each teen parent recipient who is the head of household in addition to each adult recipient for whom a needs assessment is conducted enable that person to become self-sufficient by participating in a specified activity, such as serving in a community work program or other work program approved by TWC, rather than approved by TDHS;

(5) Makes no changes to this subdivision;

(6) each dependent child younger than 18 years of age and each, rather than or, teen parent younger than 19 years of age and other teen parent recipient who is the head of household attend school regularly unless the person, rather than child, has a high school diploma or equivalency certificate or is a child who is specifically exempted from school attendance under Section 25.086 (Exemptions), Education Code;

(7) each recipient comply with HHSC, rather than TDHS, rules regarding proof of school attendance; and

(8) Makes no changes to this subdivision.

(g) Redefines "payee" in this section.

(i) Requires HHSC to require each nonrecipient parent to sign a bill of responsibilities that defines the responsibilities of the state and of the nonrecipient parent. Requires that the responsibility agreement require that a nonrecipient parent comply with the requirements of Subsections (d)(1) through (8).

SECTION 5.02. Repealer: Section 31.0031(f) (relating to exemptions which TDHS may provide for by rule), Human Resources Code.

## ARTICLE 6. STUDY

SECTION 6.01. STUDY OF ELECTRONIC PROVISION OF FINANCIAL ASSISTANCE BENEFITS. (a) Requires HHSC to study the feasibility of providing financial assistance benefits under Chapter 31, Human Resources Code, in the form of an electronic voucher that can be used and accepted in the same manner as a credit card.

(b) Requires HHSC, not later than September 1, 2014, to report its findings to the governor, the lieutenant governor, the speaker of the house of representatives, the Senate Health and Human Services Committee or its successor, and the House Human Services Committee or its successor.

(c) Provides that this section expires September 1, 2015.

## ARTICLE 7. FEDERAL AUTHORIZATION AND EFFECTIVE DATE

SECTION 7.01. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes a delay of implementation until such a waiver or authorization is granted.

SECTION 7.02. Effective date: September 1, 2003.