

H. B. 2965

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(By Delegates Ellington, Overington, Howell,
C. Miller, Householder, Gearheart, Border,
Hall, R. Phillips and Nelson)

[Introduced February 1, 2011; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §4-1-24; and to amend
12 said code by adding thereto a new section, designated §9-3-6,
13 all relating to implementing drug testing for legislators of
14 the State of West Virginia and for applicants and recipients
15 of temporary assistance for needy families cash benefits;
16 providing for a substance abuse treatment program; providing
17 for protective or vendor payments to a third-party payee for
18 the benefit of the members of the household; ensuring
19 confidentiality of records.

20 *Be it enacted by the Legislature of West Virginia:*

21 That the Code of West Virginia, 1931, as amended, be amended
22 by adding thereto a new section, designated §4-1-24; and that said
23 code be amended by adding thereto a new section, designated §9-3-6,
24 all to read as follows:

CHAPTER 4. THE LEGISLATURE.

26 **ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS;**

1 **INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF**
2 **CAPITOL BUILDING; PREFILING OF BILLS AND**
3 **RESOLUTIONS; STANDING COMMITTEES; INTERIM**
4 **MEETINGS; NEXT MEETING OF THE SENATE.**

5 **§4-1-24. Drug testing for legislators.**

6 (a) On the first day of each regular session of the
7 Legislature, the Commissioner of the Division of Human Services
8 shall administer drug testing to each member of the Legislature.
9 This test shall provide a mechanism to detect illegal consumption
10 of controlled substances.

11 (b) All persons who are members of the Legislature must submit
12 to the commissioner's drug testing program.

13 (c) Any member of the Legislature who fails an initial drug
14 test must submit to a second drug test no less than thirty days
15 following the initial drug test, but not to exceed sixty days
16 following the initial test. If this second test is not passed, the
17 member shall forfeit all pay and allowances for that calendar year.

18 (d) The commissioner shall be responsible for ensuring the
19 confidentiality of any and all drug test results administered as
20 part of the program. Drug test results shall only be used for the
21 purpose of determining fitness for pay and allowances under
22 subsection (c) of this section. At no time shall drug test results
23 be released to any public or private person or entity.

24 **CHAPTER 9. HUMAN SERVICES.**

1 **ARTICLE 3. APPLICATION FOR AND GRANTING OF ASSISTANCE.**

2 **§9-3-6. Drug testing for recipients of federal-state and state**
3 **assistance.**

4 (a) The Commissioner of the Division of Human Services shall
5 institute a drug testing program for controlled substances for all
6 applicants and recipients for temporary assistance for needy
7 families cash benefits. The program shall contain, at a minimum,
8 random testing, probable cause testing, testing at the time of
9 application and treatment for substance abuse.

10 (b) The commissioner shall deny, or otherwise deem ineligible,
11 any applicant for federal-state or state assistance in the form of
12 temporary assistance for needy families cash benefits, if the
13 applicant or recipient twice fails a drug test for illegal
14 consumption of those controlled substances which the commissioner
15 shall designate. However, the commissioner shall refer a
16 work-eligible applicant or work-eligible recipient who tested
17 positive for the use of a controlled substance under this section
18 to an appropriate substance abuse treatment program approved by the
19 division. Other members of a household which includes a person who
20 has been declared ineligible for temporary assistance for needy
21 families assistance shall, if otherwise eligible, continue to
22 receive temporary assistance for needy families benefits as
23 protective or vendor payments to a third-party payee for the
24 benefit of the members of the household.

25 (c) Any applicant for, or recipient of, federal-state or state

1 assistance in the form of temporary assistance for needy families
2 cash benefits shall submit to the commissioner's drug testing
3 program as a requirement for eligibility or continued receipt of
4 such assistance. Failure to comply shall be the same as twice
5 failing a drug test.

6 (d) Any applicant for, or recipient of, federal-state or
7 state assistance in the form of temporary assistance for needy
8 families cash benefits who fails an initial drug test shall be
9 required to submit to a second drug test no less than thirty days
10 following the initial drug test, but not to exceed sixty days. The
11 commissioner shall not deny, or otherwise deem ineligible, any
12 applicant or recipient until the failure of the second drug test.

13 (e) The commissioner shall not deny, or otherwise deem
14 ineligible, any applicant or recipient even if the applicant or
15 recipient fails the second drug test: *Provided*, That the applicant
16 or recipient enrolls or is enrolled in a drug treatment program
17 authorized by the Commissioner of the Division of Human Services.

18 (f) Any applicant for, or recipient of, federal-state or state
19 assistance in the form of temporary assistance for needy families
20 cash benefits denied, or otherwise deemed ineligible, by the
21 commissioner following a failure of an initial drug test and the
22 mandatory secondary test shall be ineligible to receive, or
23 prohibited from reapplying for, such benefits for a period of two
24 years from the date that commissioner denied an applicant's or
25 recipient's claim or determined the applicant or recipient to be

1 ineligible. Any applicant or recipient denied or deemed to be
2 ineligible under this section shall submit to a mandatory drug test
3 as part of a reapplication for federal-state or state assistance in
4 the form of temporary assistance for needy families cash benefits.

5 (g) The commissioner shall be responsible for ensuring that
6 applicants and recipients chosen for random drug testing are
7 selected at random, and not by any other criteria, including, but
8 not limited to, suspicion of drug use, previous drug use or
9 criminal conviction for drug use or possession.

10 (h) The commissioner shall be responsible for ensuring the
11 confidentiality of any and all drug test results administered as
12 part of the program. Drug test results shall only be used for the
13 purpose of denying, or determining eligibility for continued
14 receipt of, federal-state or state assistance in the form of
15 temporary assistance for needy families cash benefits. At no time
16 shall drug test results be released to any public or private person
17 or entity or any law-enforcement agency.

18 (i) The commissioner shall be required, after this testing
19 process has been in place for two years, to report to the
20 Legislature on the effectiveness of drug testing as observed during
21 those two years.

NOTE: The purpose of this bill is to create a drug testing program for applicants and recipients of temporary assistance for needy families cash benefits and for elected officials. Any applicant or recipient who fails an initial drug test will be

required to pass a second drug test in the following thirty to sixty days to maintain eligibility for or recipients of such benefits. Failing the secondary drug test results in ineligibility for benefits for a period of two years, and requires a mandatory drug test as part of a reapplication for benefits. Legislators shall be required to submit to drug testing. Any legislator who fails two consecutive drug tests must forfeit all pay and allowances. The bill provides for a substance abuse treatment program. The bill provides for protective or vendor payments to a third-party payee for the benefit of the members of the household. The bill also ensures confidentiality of records.

§4-1-24 and §9-3-6 are new; therefore, they have been completely underscored.