

H. B. 3079

(By Delegates Hall, Ellington, Carmichael,
Craig, Rodighiero, R. Phillips, Pasdon, Nelson,
J. Miller, Storch and Savilla)

[Introduced February 9, 2011; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §4-1-24; and to amend
said code by adding thereto a new section, designated §9-3-6,
all relating to implementing random drug testing for
recipients of temporary assistance for needy families cash
benefits and for legislators of the State of West Virginia.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 4. THE LEGISLATURE.

**ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS;
INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF
CAPITOL BUILDING; PREFILING OF BILLS AND
RESOLUTIONS; STANDING COMMITTEES; INTERIM**

1 **MEETINGS; NEXT MEETING OF THE SENATE.**

2 **§4-1-24. Drug testing for legislators.**

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

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

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

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

21 **CHAPTER 9. HUMAN SERVICES.**

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

23 **§9-3-6. Random drug testing for recipients of federal-state and**
24 **state assistance.**

1 (a) The Commissioner of the Division of Human Services shall
2 institute a random drug testing program for all applicants for
3 temporary assistance for needy families cash benefits.

4 (b) The commissioner shall deny, or otherwise deem ineligible,
5 any applicant for federal-state or state assistance in the form of
6 temporary assistance for needy families cash benefits, if the
7 applicant or recipient twice fails a drug test for illegal
8 consumption of those controlled substances which the commissioner
9 shall designate.

10 (c) Any applicant for federal-state or state assistance in the
11 form of temporary assistance for needy families cash benefits shall
12 submit to the commissioner's random drug testing program as a
13 requirement for eligibility or continued receipt of such
14 assistance. Failure to comply shall be the same as twice failing
15 a drug test.

16 (d) Any applicant for federal-state or state assistance in
17 the form of temporary assistance for needy families cash benefits
18 who fails an initial drug test shall be required to submit to a
19 second drug test no less than thirty days following the initial
20 drug test, but not to exceed sixty days. The commissioner shall
21 not deny, or otherwise deem ineligible, any applicant or recipient
22 until the failure of the second drug test.

23 (e) The commissioner shall not deny, or otherwise deem
24 ineligible, any applicant or recipient even if the applicant or

1 recipient fails the second drug test; provided that the applicant
2 or recipient enrolls or is enrolled in a drug treatment program
3 authorized by the Commissioner of the Division of Human Services.

4 (f) Any applicant for federal-state or state assistance in the
5 form of temporary assistance for needy families cash benefits
6 denied, or otherwise deemed ineligible, by the commissioner
7 following a failure of an initial random drug test and the
8 mandatory secondary test shall be ineligible to receive, or
9 prohibited from reapplying for, such benefits for a period of two
10 years from the date that commissioner denied an applicants claim or
11 determined the applicant to be ineligible. Any applicant denied or
12 deemed to be ineligible under this section shall submit to a
13 mandatory drug test as part of a reapplication for federal-state or
14 state assistance in the form of temporary assistance for needy
15 families cash benefits.

16 (g) The commissioner shall be responsible for ensuring that
17 applicants chosen for drug testing are selected at random, and not
18 by any other criteria, including, but not limited to, suspicion of
19 drug use, previous drug use or criminal conviction for drug use or
20 possession.

21 (h) The commissioner shall be responsible for ensuring the
22 confidentiality of any and all drug test results administered as
23 part of the program. Random drug test results shall only be used
24 for the purpose of denying, or determining eligibility for

1 continued receipt of, federal-state or state assistance in the form
2 of temporary assistance for needy families cash benefits. At no
3 time shall drug test results be released to any public or private
4 person or entity.

5 (i) The commissioner shall be required, after this testing
6 process has been in place for two years, to report to the
7 Legislature on the effectiveness of randomized drug testing as
8 observed during these two years.

NOTE: The purpose of this bill is to create a random 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 benefit 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.

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