

H. B. 2527

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(By Delegates Ellington, Nelson, E., O'Neal, Ireland, Gearheart, Householder, Overington, Howell, Border, Pasdon and Miller)

[Introduced February 19, 2013; 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 §9-3-6, relating to human services; application for and granting of assistance; and implementing drug testing for recipients of federal-state and state assistance.

*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 §9-3-6, to read as follows:

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

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

(a) The Commissioner of the Division of Human Services shall institute a drug testing program for controlled substances for all applicants for and recipients of temporary assistance for needy families cash (TANF) benefits. The program shall contain, at a

1 minimum, random testing, probable cause testing, testing at the  
2 time of application and treatment for substance abuse. The  
3 controlled substances for which tests shall be conducted shall  
4 include, at a minimum, amphetamines, tetrahydrocannabinol,  
5 oxycodone, cocaine, phencyclidine (PCP), any opiate, barbiturate,  
6 benzodiazepine, methamphetamine, propoxyphene and any tricyclic  
7 antidepressants. An individual may not be considered to have  
8 failed any such test if there is a positive test result that is for  
9 a legally obtained medication prescribed to that person which is  
10 being used for its indicated purpose.

11 (b) Ineligibility generally:

12 (1) The commissioner shall deny, or otherwise considerable  
13 ineligible, any applicant for federal-state or state assistance in  
14 the form of temporary assistance for needy families cash benefits,  
15 if the applicant or recipient twice fails a drug test for illegal  
16 consumption of those controlled substances which the commissioner  
17 designates: Provided, That the commissioner shall refer a work-  
18 eligible applicant or work-eligible recipient who tests positive  
19 for the use of a controlled substance under this section to an  
20 appropriate substance abuse treatment program approved by the  
21 division.

22 (2) Other members of a household that includes a person who  
23 has been declared ineligible for temporary assistance for needy  
24 families assistance shall, if otherwise eligible, continue to

1 receive temporary assistance for needy families benefits.

2 (A) A dependent child's eligibility for TANF benefits may not  
3 be affected by a parent's failure to pass a drug test.

4 (B) An appropriate protective payee shall be designated to  
5 receive benefits on behalf of the child.

6 (C) The parent may choose to designate another individual to  
7 receive benefits for the parent's minor child. The designated  
8 individual must be an immediate family member or, if an immediate  
9 family member is not available or the family member declines the  
10 designation, another individual, approved by the division, may be  
11 so designated. The designated individual must also undergo drug  
12 testing before being approved to receive benefits on behalf of the  
13 child. If the designated individual tests positive for controlled  
14 substances, he or she is ineligible to receive benefits on behalf  
15 of the child.

16 (c) Any applicant for, or recipient of, federal-state or state  
17 assistance in the form of temporary assistance for needy families  
18 cash benefits shall submit to the commissioner's drug testing  
19 program as a requirement for eligibility or continued receipt of  
20 such assistance. Failure to submit to this testing shall have the  
21 same result as twice failing a drug test. Each individual to be  
22 tested, before the test is conducted, is to be informed that he or  
23 she may, but is not required to, advise the agent administering the  
24 test of any over-the-counter medication and of any legally obtained

1 prescription medication he or she is taking. Each individual to be  
2 tested must be assured a reasonable degree of privacy while  
3 producing and submitting a sample for drug testing, consistent with  
4 the state's need to ensure the reliability of the sample.

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

13 (e) The commissioner may not deny, or otherwise determine  
14 ineligible, any applicant or recipient who fails the second drug  
15 test if the applicant or recipient immediately enrolls in a drug  
16 treatment program authorized by the Commissioner of the Division of  
17 Human Services.

18 (f) Reapplication following ineligibility:

19 (1) Any applicant for, or recipient of, federal-state or state  
20 assistance in the form of temporary assistance for needy families  
21 cash benefits who is denied, or otherwise determined ineligible to  
22 receive benefits by the commissioner following a failure of an  
23 initial drug test and the mandatory secondary test, shall be  
24 ineligible to receive, and prohibited from reapplying for, these

1 benefits for a period of two years from the date that commissioner  
2 denied the applicant's or recipient's claim or determined the  
3 applicant or recipient to be ineligible. Any applicant or  
4 recipient denied or determined to be ineligible under this section  
5 shall submit to a mandatory drug test as part of a reapplication  
6 for federal-state or state assistance in the form of temporary  
7 assistance for needy families cash benefits.

8       (2) Any individual who is forbidden to receive benefits under  
9 this section may reapply for these benefits no sooner than six  
10 months after the commissioner declares he or she is ineligible for  
11 the benefits if the individual can document the successful  
12 completion of a drug treatment program authorized by the  
13 Commissioner of the Division of Human Services. An individual who  
14 has met the requirements of this subsection and reapplies for  
15 benefits must also pass an initial drug test. The cost of any drug  
16 testing and drug treatment provided under this section is the  
17 responsibility of the individual being tested and receiving  
18 treatment. An individual may reapply for benefits pursuant to the  
19 exception contained in this subsection only once.

20       (g) The commissioner shall ensure that applicants and  
21 recipients chosen for random drug testing are selected at random,  
22 and not by any other criteria, including, but not limited to,  
23 suspicion of drug use, previous drug use or criminal conviction for  
24 drug use or possession.

1       (h) The commissioner shall ensure the confidentiality of all  
2 drug test results administered as part of the program. Drug test  
3 results shall only be used for the purpose of denying, or  
4 determining eligibility for continued receipt of, federal-state or  
5 state assistance in the form of temporary assistance for needy  
6 families cash benefits. Drug test results may not be released to  
7 any public or private person or entity or any law-enforcement  
8 agency, except as otherwise authorized by this code.

9       (i) The commissioner shall report to the Legislature on the  
10 observed effectiveness of drug testing, after the testing process  
11 established in this section has been in place for 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. 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 these 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. 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.

§9-3-6 is new; therefore, it has been completely underscored.