

**Senate Bill No. 301**

(By Senators Carmichael, Jenkins, D. Hall and Nohe)

---

[Introduced January 8, 2014; referred to the  
Committee on Health and Human Resources;  
then to the Committee on the Judiciary;  
and then to the Committee on Finance.]

---

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §4-1B-1, §4-1B-2 and §4-1B-3; to amend said code by adding thereto a new section, designated §9-3-6; and to amend said code by adding thereto a new section, designated §21A-6-18, all relating to the mandatory drug testing and treatment for members of the Legislature; and implementing random drug testing for recipients of federal, state, state assistance or unemployment compensation benefits.

*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 article, designated §4-1B-1, §4-1B-2 and

1 §4-1B-3; that said code be amended by adding thereto a new section,  
2 designated §9-3-6; and that said code be amended by adding thereto  
3 a new section, designated §21A-6-18, all to read as follows:

4 **CHAPTER 4. THE LEGISLATURE.**

5 **ARTICLE 1B. DRUG TESTING.**

6 **§4-1B-1. Purpose.**

7 The purpose of this article is to demonstrate leadership and  
8 accountability on the important issue of illegal drug usage. Every  
9 elected or appointed member of the West Virginia Legislature shall  
10 submit to the same drug test prescribed by the Commissioner of the  
11 Division of Human Services for recipients of federal-state and  
12 state assistance and recipients of unemployment compensation.

13 **§4-1B-2. Drug testing for members of the Legislature; treatment.**

14 (a) Drug testing shall be taken within the first thirty days  
15 of assuming the office of Senator or Delegate. Every elected or  
16 appointed member of the West Virginia Legislature shall submit to  
17 the drug testing program prescribed by the Commissioner of the  
18 Department of Human Services. Failure to submit to this testing  
19 shall have the same result as twice failing a drug test. Each  
20 individual to be tested, before the test is conducted, is to be  
21 informed that he or she may, but is not required to, advise the  
22 agent administering the test of any over-the-counter medication and  
23 of any legally obtained prescription medication he or she is

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

5 (b) Any elected or appointed member of the West Virginia  
6 Legislature who fails an initial drug test shall be required to  
7 submit to a second drug test no less than thirty days following the  
8 initial drug test, but no later than sixty days therefrom.

9 (c) A member of the Legislature may not be considered to have  
10 failed any such test if there is a positive test result that is for  
11 a legally obtained medication prescribed to that person which is  
12 being used for its indicated purpose.

13 (d) Compensation shall be withheld if a member of the  
14 Legislature twice fails a drug test for illegal consumption of  
15 those controlled substances which the commissioner designates:  
16 *Provided*, That the commissioner shall refer that member of the  
17 Legislature who tests positive for the use of a controlled  
18 substance under this section to an appropriate substance abuse  
19 treatment program, which may include a faith-based program,  
20 approved by the division.

21 **§4-1B-3. Report to Legislature of program's effectiveness.**

22 The commissioner shall report to the Legislature on the  
23 observed effectiveness of drug testing, after the testing process

1 established in this article has been in place for two years.

2 **CHAPTER 9. HUMAN SERVICES.**

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

4 **§9-3-6. Drug testing for recipients of federal-state and state**  
5 **assistance.**

6 (a) The Commissioner of the Division of Human Services shall  
7 institute a drug testing program for controlled substances for all  
8 applicants for and recipients of temporary assistance for needy  
9 families cash (TANF) benefits. The program shall contain, at a  
10 minimum, random testing, probable cause testing, testing at the  
11 time of application and treatment for substance abuse. The  
12 controlled substances for which tests shall be conducted shall be  
13 determined by the commissioner. An individual may not be  
14 considered to have failed any such test if there is a positive test  
15 result that is for a legally obtained medication prescribed to that  
16 person which is being used for its indicated purpose.

17 (b) Ineligibility generally:

18 (1) The commissioner shall deny, or otherwise consider  
19 ineligible, any applicant for federal-state or state assistance in  
20 the form of temporary assistance for needy families cash benefits,  
21 if the applicant or recipient twice fails a drug test for illegal  
22 consumption of those controlled substances which the commissioner  
23 designates: *Provided*, That the commissioner shall refer a

1 work-eligible applicant or work-eligible recipient who tests  
2 positive for the use of a controlled substance under this section  
3 to an appropriate substance abuse treatment program, which may  
4 include a faith-based program, approved by the division.

5 (2) Other members of a household that includes a person who  
6 has been declared ineligible for temporary assistance for needy  
7 families assistance shall, if otherwise eligible, continue to  
8 receive temporary assistance for needy families benefits.

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

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

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

23 (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 submit to this testing shall have the  
5 same result as twice failing a drug test. Each individual to be  
6 tested, before the test is conducted, is to be informed that he or  
7 she may, but is not required to, advise the agent administering the  
8 test of any over-the-counter medication and of any legally obtained  
9 prescription medication he or she is taking. Each individual to be  
10 tested must be assured a reasonable degree of privacy while  
11 producing and submitting a sample for drug testing, consistent with  
12 the state's need to ensure the reliability of the sample.

13 (d) Any applicant for, or recipient of, federal-state or state  
14 assistance in the form of temporary assistance for needy families  
15 cash benefits who fails an initial drug test shall be required to  
16 submit to a second drug test no less than thirty days following the  
17 initial drug test, but no later than sixty days therefrom. The  
18 commissioner may not deny, or otherwise determine ineligible, any  
19 applicant or recipient until he or she has failed the second drug  
20 test.

21 (e) The commissioner may not deny, or otherwise determine  
22 ineligible, any applicant or recipient who fails the second drug  
23 test if the applicant or recipient immediately enrolls in a drug

1 treatment program authorized by the Commissioner of the Division  
2 of Human Services.

3 (f) Reapplication following ineligibility:

4 (1) Any applicant for, or recipient of, federal-state or state  
5 assistance in the form of temporary assistance for needy families  
6 cash benefits who is denied, or otherwise determined ineligible to  
7 receive benefits by the commissioner following a failure of an  
8 initial drug test and the mandatory secondary test, shall be  
9 ineligible to receive, and prohibited from reapplying for, these  
10 benefits for a period of one year from the date that commissioner  
11 denied the applicant's or recipient's claim or determined the  
12 applicant or recipient to be ineligible. Any applicant or  
13 recipient denied or determined to be ineligible under this section  
14 shall submit to a mandatory drug test as part of a reapplication  
15 for federal-state or state assistance in the form of temporary  
16 assistance for needy families cash benefits.

17 (2) Any individual who is forbidden to receive benefits under  
18 this section may reapply for these benefits no sooner than six  
19 months after the commissioner declares he or she is ineligible for  
20 the benefits if the individual can document the successful  
21 completion of a drug treatment program authorized by the  
22 Commissioner of the Division of Human Services. An individual who  
23 has met the requirements of this subsection and reapplies for

1 benefits must also pass an initial drug test. The cost of any drug  
2 testing and drug treatment provided under this section is the  
3 responsibility of the individual being tested and receiving  
4 treatment. An individual may reapply for benefits pursuant to the  
5 exception contained in this subsection only once.

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

11 (h) The commissioner shall ensure the confidentiality of all  
12 drug test results administered as part of the program. Drug test  
13 results shall only be used for the purpose of denying, or  
14 determining eligibility for continued receipt of, federal-state or  
15 state assistance in the form of temporary assistance for needy  
16 families cash benefits. Drug test results may not be released to  
17 any public or private person or entity or any law-enforcement  
18 agency, except as otherwise authorized by this code.

19 (I) The commissioner shall report to the Legislature on the  
20 observed effectiveness of drug testing, after the testing process  
21 established in this section has been in place for two years.

22 **CHAPTER 21A. UNEMPLOYMENT COMPENSATION.**

23 **ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.**



1 **§21A-6-18. Drug testing for recipients of unemployment**  
2 **compensation.**

3 (a) The Commissioner of the Bureau of Employment Programs  
4 shall institute a drug testing program for controlled substances  
5 for all applicants for and recipients of unemployment compensation  
6 benefits under this chapter. The program shall contain, at a  
7 minimum, random testing, probable cause testing, testing at the  
8 time of application and treatment for substance abuse. The  
9 controlled substances for which tests shall be conducted shall be  
10 determined by the commissioner. An individual may not be  
11 considered to have failed any such test if there is a positive test  
12 result that is for a legally obtained medication prescribed to that  
13 person which is being used for its indicated purpose.

14 (b) The commissioner shall deny, or otherwise consider  
15 ineligible, any applicant for unemployment compensation benefits ,  
16 if the applicant or recipient twice fails a drug test for illegal  
17 consumption of those controlled substances which the commissioner  
18 designates: *Provided*, That the commissioner shall refer a  
19 work-eligible applicant or work-eligible recipient who tests  
20 positive for the use of a controlled substance under this section  
21 to an appropriate substance abuse treatment program approved by the  
22 commissioner.

23 (c) Any applicant for, or recipient of unemployment

1 compensation benefits shall submit to the commissioner's drug  
2 testing program as a requirement for eligibility or continued  
3 receipt of such benefits. Failure to submit to this testing shall  
4 have the same result as twice failing a drug test. Each individual  
5 to be tested, before the test is conducted, is to be informed that  
6 he or she may, but is not required to, advise the agent  
7 administering the test of any over-the-counter medication and of  
8 any legally obtained prescription medication he or she is taking.  
9 Each individual to be tested must be assured a reasonable degree of  
10 privacy while producing and submitting a sample for drug testing,  
11 consistent with the state's need to ensure the reliability of the  
12 sample.

13 (d) Any applicant for, or recipient of unemployment  
14 compensation benefits who fails an initial drug test shall be  
15 required to submit to a second drug test no less than thirty days  
16 following the initial drug test, but no later than sixty days  
17 therefrom. The commissioner may not deny, or otherwise determine  
18 ineligible, any applicant or recipient until he or she has failed  
19 the second drug test.

20 (e) The commissioner may not deny, or otherwise determine  
21 ineligible, any applicant or recipient who fails the second drug  
22 test if the applicant or recipient immediately enrolls in a drug  
23 treatment program authorized by the commissioner.

1 (f) Reapplication following ineligibility:

2 (1) Any applicant for, or recipient of, unemployment  
3 compensation benefits who is denied, or otherwise determined  
4 ineligible to receive benefits by the commissioner following a  
5 failure of an initial drug test and the mandatory secondary test,  
6 shall be ineligible to receive, and prohibited from reapplying for,  
7 these benefits for a period of one year from the date that the  
8 commissioner denied the applicant's or recipient's claim or  
9 determined the applicant or recipient to be ineligible. Any  
10 applicant or recipient denied or determined to be ineligible under  
11 this section shall submit to a mandatory drug test as part of a  
12 reapplication for unemployment compensation benefits.

13 (2) Any individual who is forbidden to receive benefits under  
14 this section may reapply for these benefits no sooner than six  
15 months after the commissioner declares he or she is ineligible for  
16 the benefits if the individual can document the successful  
17 completion of a drug treatment program authorized by the  
18 Commissioner of the Bureau of Employment Programs. An individual  
19 who has met the requirements of this subsection and reapplies for  
20 benefits must also pass an initial drug test. The cost of any drug  
21 testing and drug treatment provided under this section is the  
22 responsibility of the individual being tested and receiving  
23 treatment. An individual may reapply for benefits pursuant to the

1 exception contained in this subsection only once.

2 (g) The commissioner shall ensure that applicants and  
3 recipients chosen for random drug testing are selected at random,  
4 and not by any other criteria, including, but not limited to,  
5 suspicion of drug use, previous drug use or criminal conviction for  
6 drug use or possession.

7 (h) The commissioner shall ensure the confidentiality of all  
8 drug test results administered as part of the program. Drug test  
9 results shall only be used for the purpose of denying, or  
10 determining eligibility for continued receipt of unemployment  
11 compensation benefits. Drug test results may not be released to  
12 any public or private person or entity or any law-enforcement  
13 agency, except as otherwise authorized by this code.

14 (I) The commissioner shall report to the Legislature on the  
15 observed effectiveness of drug testing, after the testing process  
16 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; and for recipients of unemployment 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 one year, 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. Finally, the bill provides for mandatory drug testing for members of the Legislature based on the drug testing program prescribed by the Commissioner of the Division of Human Services. In addition to the requirement of participating in a substance abuse treatment program for a member of the Legislature, the bill provides for the withholding of compensation until drug treatment is undertaken.

Article §4-1B-1, §4-1B-2 and §4-1B-3, are new; therefore, strike-throughs and underscoring have been omitted.

Sections §9-3-6 and §21A-6-18 are new; therefore, strike-throughs and underscoring have been omitted.