

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2021**

4 (By Delegate Lane, Faircloth, Kurcaba, Westfall, Moffatt, Ihle, Frich and Phillips, R)

5
6 (Originating in the House Committee on Finance)

7
8 [February 27, 2015]

9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section
11 designated §9-3-6, relating to drug testing for recipients of benefits from the temporary
12 assistance for needy families program; creating a pilot program; providing definitions;
13 providing basis for reasonable suspicion of drug use; establishing administrative review of
14 decisions to deny benefits; providing a mechanism for dependent children to receive benefits
15 if a parent is deemed ineligible; authorizing rulemaking; requiring results of the drug test
16 remain confidential; providing penalties; and allowing for exceptions.

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

18 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
19 section designated §9-3 to read as follows:

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

21 **§9-3-6. Pilot program for drug screening of applicants for cash assistance.**

22 (a) As used in this section:

23 (1) “Department” means the Department of Health and Human Resources;

1 (2) “Drug Screening” means any chemical, biological, or physical instrumental analysis
2 administered by a laboratory certified by the United States Department of Health and Human
3 Services or other licensing agency in this state for the purpose of determining the presence or
4 absence of a drug or its metabolites.

5 (3) “Secretary” means the Secretary of the department or his or her designee.

6 (4) “Temporary Assistance for Needy Families Program” means assistance provided through
7 ongoing cash benefits pursuant to 42 U.S.C. §601, et seq.

8 (b) The Secretary of the Department of Human Resources shall implement and administer
9 a a pilot program in one or more counties, subject to federal approval, a drug screening program for
10 any adult applying for the Temporary Assistance for Needy Families Program based upon a
11 reasonable suspicion that the adult uses or is under the influence of a drug.

12 (c) Reasonable suspicion exists if an applicant is:

13 (1) Convicted of a drug-related offense within the previous five years, other than simple
14 possession of an illegal controlled substance; or

15 (2) A mother who delivers an infant addicted to certain controlled substances, not legally
16 prescribed, including amphetamines, tetrahydrocannabinol, oxycodone, cocaine, phencyclidine
17 (PCP), any opiate, barbiturate, benzodiazepine, methamphetamine, propoxyphene, and any tricyclic
18 antidepressants: *Provided*, That if the mother agrees to undergo a course of substance abuse
19 education and treatment as prescribed in article fifteen, chapter sixty-two of this code, or the
20 substantial equivalent, she is eligible to apply for the benefits, subject to the imposition of further
21 mandatory drug testing not inconsistent with the provisions of this code.

22 (3) Presentation of a valid prescription of the controlled substance detected is an absolute
23 defense for failure of any drug test administered under the provisions of this section.

1 (d) Other adult members of a household that includes a person who has been declared
2 ineligible for the Temporary Assistance for Needy Families Program shall, if otherwise eligible,
3 continue to receive temporary assistance for needy families benefits.

4 (e)(1) No dependent child's eligibility for benefits under the Temporary Assistance for Needy
5 Families Program may be affected by a parent's failure to pass a drug test.

6 (2) If a parent is deemed ineligible for the Temporary Assistance for Needy Families
7 Program, the dependent child eligibility for public assistance benefits is not affected and an
8 appropriate protective payee shall be designated to receive benefits on behalf of the child.

9 (3) The parent may choose to designate another person to receive benefits for the minor child.
10 The designated person shall be an immediate family member or, if an immediate family member is
11 not available or the family member declines the option, another person, may be designated.

12 (4) The designated person shall be approved by the secretary. The designated person shall
13 also undergo drug testing before being approved to receive benefits on behalf of the child. If the
14 designated person tests positive for controlled substances, he or she is ineligible to receive benefits
15 on behalf of the child.

16 (f) (1) An applicant for the Temporary Assistance for Needy Families Program, who is
17 determined ineligible to receive benefits by the secretary is ineligible to receive, and prohibited from
18 reapplying for, benefits for a period of two years from the date that secretary determined the
19 applicant to be ineligible. An applicant determined to be ineligible under this section shall submit
20 to a mandatory drug test as part of a reapplication for the Temporary Assistance for Needy Families
21 Program; and

22 (2) An individual who is prohibited to receive benefits under this section may reapply for
23 benefits no sooner than six months after the secretary declares he or she is ineligible for benefits, if

1 the individual can document the successful completion of a drug treatment program as specified in
2 this section.. An individual who has met the requirements of this subsection and reapplies for the
3 Temporary Assistance for Needy Families Program shall also pass a drug test. The cost of any drug
4 testing and drug treatment provided under this subsection is the responsibility of the individual being
5 tested and receiving treatment. An individual may reapply for the Temporary Assistance for Needy
6 Families Program pursuant to the exception contained in this subdivison only once.

7 (g) An applicant who is denied admittance to the Temporary Assistance for Needy Families
8 Program under this section may request a review the denial by the Board of Review. The results of
9 a drug screening are admissible without further authentication or qualification in the review of denial
10 by the Board of Review and in any appeal.

11 (h) The secretary shall ensure the confidentiality of all drug test results administered as part
12 of this program. Drug test results shall only be used for the purpose of determining eligibility for
13 the Temporary Assistance for Needy Families Program. At no time may drug test results be released
14 to any public or private person or entity or any law-enforcement agency, except as otherwise
15 authorized by this section.

16 (i) The secretary shall propose rules for legislative approval according article three, chapter
17 twenty-nine-a to prescribe the design, operation, and standards for the implementation of this section.

18 (j) A person who intentionally misrepresents any material fact in an application filed under
19 the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be
20 punished by a fine of not less than \$100 or more than \$1,000 or by imprisonment in jail not
21 exceeding six months or by both fine and imprisonment.

22 (k) (1) An individual convicted under federal or state law of any offense which is classified
23 as a felony within West Virginia which has as an element the possession, use, or distribution of a

1 controlled substance, as defined by 21 U.S.C. §802(6) shall not be eligible for assistance under any
2 state program funded under part A of title IV of the Social Security Act, or benefits under the food
3 stamp program (as defined in 3(h) the Food Stamp Act of 1977) or any state program carried out
4 under the Food Stamp Act of 1977.

5 (2) The secretary may elect to opt out of the provisions of subdivision (1) of this subsection
6 through policy or may limit the period for which subdivision (1) shall apply to individuals domiciled
7 in this state. Subdivision (1) of this section shall not apply to convictions occurring on or before the
8 enactment date of 18 U.S.C. §862a.

9 (1) The secretary shall report to the Joint Committee on Government and Finance by
10 December 31, 2015 on the status of the pilot program described in this section, and on December
11 31, 2016 on the pilot program. The report shall include, but not be limited to: (1) the number of
12 applicants who were deemed ineligible to receive benefits under the program because of a positive
13 test for controlled substances, (2) the number of applicants that are deemed ineligible because of a
14 conviction of a drug-related offense or felony as described in this section, and (3) the number of
15 those applicants that receive benefits successful completion of a drug treatment program as specified
16 in this section.