

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 274**

4 (By Senators Cole (Mr. President) and Kessler,

5 By Request of the Executive)

6 _____
7 [Originating in the Committee on the Judiciary;

8 reported February 12, 2015.]
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12 A BILL to amend and reenact §9-9-11 of the Code of West Virginia, 1931, as amended, relating to
13 Temporary Assistance for Needy Families program; directing Secretary of Department of
14 Health and Human Resources promulgate emergency and legislative rules setting forth
15 schedule of sanctions; identifying certain factors and goals that secretary is to consider when
16 setting schedule of sanctions; directing secretary promulgate legislative rules governing what
17 constitutes de minimis violations and those violations subject to sanctions and maximum
18 penalties; setting forth reporting requirement to Legislative Oversight Commission on Health
19 and Human Resources Accountability regarding sanctions; and providing copies of reports
20 be provided to President of the Senate and Speaker of the House.

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

22 That §9-9-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted

1 to read as follows:

2 **ARTICLE 9. WEST VIRGINIA WORKS PROGRAM.**

3 **§9-9-11. Breach of contract; notice; sanctions.**

4 (a) The department may terminate cash assistance benefits to an at-risk family if it finds any
5 of the following:

6 (1) Fraud or deception by the beneficiary in applying for or receiving program benefits;

7 (2) A substantial breach by the beneficiary of the requirements and obligations set forth in
8 the personal responsibility contract and any amendments or addenda to the contract; or

9 (3) A violation by the beneficiary of any provision of the personal responsibility contract or
10 any amendments or addenda to the contract, this article, or any rule or policy promulgated by the
11 secretary pursuant to this article.

12 (b) In the event the department determines that benefits received by the beneficiary are
13 subject to reduction or termination, written notice of the reduction or termination and the reason for
14 the reduction or termination shall be deposited in the United States mail, postage prepaid and
15 addressed to the beneficiary at his or her last-known address at least thirteen days prior to the
16 termination or reduction. The notice shall state the action being taken by the department and grant
17 to the beneficiary a reasonable opportunity to be heard at a fair and impartial hearing before the
18 department in accordance with administrative procedures established by the department and due
19 process of law.

20 (c) In any hearing conducted pursuant to the provisions of this section, the beneficiary has
21 the burden of proving that his or her benefits were improperly reduced or terminated and shall bear
22 his or her own costs, including attorneys' fees.

1 (d) The secretary shall ~~determine by rule~~ promulgate emergency rules and propose for
2 legislative promulgation legislative rules, pursuant to article three, chapter twenty-nine-a of this
3 code, setting forth the schedule of sanctions to be imposed when a beneficiary has violated any
4 provision of this article, of his or her personal responsibility contract or any amendment or
5 addendum to the contract, or any applicable department rule. In developing these rules, the secretary
6 is directed to make those sanctions graduated and sufficiently stringent, when compared to those of
7 contiguous states, so as to discourage persons from moving from such states to this state to take
8 advantage of lesser sanctions being imposed for the same or similar violations by the secretary. The
9 secretary shall also promulgate legislative rules setting forth what constitutes de minimis violations
10 and those violations subject to sanctions and maximum penalties. ~~In the event the department finds~~
11 ~~that a beneficiary has violated any provision of this article, of his or her personal responsibility~~
12 ~~contract or any amendment or addenda to the contract, or any applicable department rule, the~~
13 ~~department shall impose sanctions against the beneficiary. as follows:~~

14 (1) ~~For the first violation, a one-third reduction of benefits for three months;~~

15 (2) ~~For a second violation, a two-thirds reduction of benefits for three months;~~

16 (3) ~~For a third or subsequent violation, a total termination of benefits for three months.~~

17 (e) ~~For any sanction imposed pursuant to subsection (d) of this section, if the beneficiary is~~
18 ~~found to have good cause for noncompliance, as defined by the secretary, the reduction or~~
19 ~~termination in benefits shall not be imposed and the violation shall not count in determining the level~~
20 ~~of sanction to be imposed for any future violation. Once a reduction in benefits is in effect, it shall~~
21 ~~remain in effect for the designated time period: *Provided*, That if a participant incurs a subsequent~~
22 ~~sanction before the sanction for a previous violation has expired, the sanctions shall run~~

1 ~~concurrently: *Provided, however,* That if a third violation occurs before the period for a previous~~
2 ~~sanction has expired, benefits shall be terminated and may not be reinstated until the three-month~~
3 ~~termination period has expired.~~

4 (e) The department shall provide an annual report regarding the sanctions relating to the
5 Temporary Assistance to Needy Families program , including their relative stringency when
6 compared to those of contiguous states, frequency of imposition and the overall success of those
7 sanctions at deterring individuals from taking advantage of the Temporary Assistance to Needy
8 Families program and accomplishing the overall purposes of the program, to the Legislative
9 Oversight Commission on Health and Human Resources Accountability on January 1 of each year.
10 Copies of that report shall also be furnished to the President of the Senate and Speaker of the House.

(NOTE: The purpose of this bill is to remove the specific sanctions from the text of the code and replace them with rule-making authority for the Department of Health and Human Resources to set sanctions by legislative rule. This will allow flexibility to the Department of Health and Human Resources to comply with federal mandates under the Temporary Assistance to Needy Families program and to keep sanctions in step with those of surrounding jurisdictions so as to deter individuals from taking advantage of the system and promote the overall purposes of the law.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)