

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 348**

4 (By Senators Blair, Carmichael and Karnes)

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6 [Originating in the Committee on Health and Human Resources;
7 reported February 11, 2015.]
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11 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
12 designated §9-3-6, relating to creation of a pilot program by Secretary of Department of
13 Health and Human Resources to provide drug screening of applicants for cash assistance for
14 whom they have a reasonable suspicion of drug abuse.

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

16 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
17 section, designated §9-3-6, to read as follows:

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

19 **§9-3-6. Pilot program for drug screening of applicants for cash assistance.**

20 (a) The Secretary of the Department of Health and Human Resource shall seek federal
21 approval if necessary and implement a one-year pilot program in three counties for drug screening
22 of applicants for cash assistance.

23 (b) As used in this section:

1 (1) "Cash assistance" means cash assistance provided to individuals under the provisions of
2 the department's Temporary Assistance for Needy Families Program as set forth in article nine of this
3 chapter.

4 (2) "Controlled substance" means the same as defined in section one hundred one, article one,
5 chapter sixty-a of this code.

6 (3) (A) "Controlled substance analog" means a substance that is intended for human
7 consumption, and:

8 (I) The chemical structure of which is substantially similar to the chemical structure of a
9 controlled substance;

10 (ii) Which has a stimulant, depressant or hallucinogenic effect on the central nervous system
11 substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous
12 system of a controlled substance included in the schedules I or II designated in article two, chapter
13 sixty-a of this code; or

14 (iii) With respect to a particular individual, which the individual represents or intends to have
15 a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar
16 to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled
17 substance included in the schedules I or II designated in article two, chapter sixty-a of this code.

18 (B) "Controlled substance analog" does not include:

19 (I) A controlled substance;

20 (ii) A substance for which there is an approved new drug application; or

21 (iii) A substance with respect to which an exemption is in effect for investigational use by
22 a particular person under section 505 of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 355,
23 to the extent conduct with respect to the substance is permitted by the exemption.

1 (c) On or before the first day of January, 2016, the Secretary of the Department of Health and
2 Human Resources shall implement a pilot program to provide for drug screening of applicants for
3 cash assistance as a condition of eligibility for cash assistance and for persons receiving cash
4 assistance as a condition of continued receipt of cash assistance. The program shall be subject to
5 applicable federal law. The Secretary shall order a drug screening of an applicant for, or a recipient
6 of, cash assistance at any time when there exists a reasonable suspicion that the applicant for, or
7 recipient of, cash assistance is unlawfully using a controlled substance or controlled substance
8 analog. The Secretary shall develop by emergency and legislative rule screening criteria on what
9 would constitute a reasonable suspicion. These criteria may include, but is not limited to:

- 10 (1) an applicant or recipient's demeanor;
- 11 (2) missed appointments at a local county office;
- 12 (3) a drug related arrest or other drug related police record;
- 13 (4) denial of an application for employment due to a positive drug screen;
- 14 (5) termination from employment due to unlawful use of a controlled substance or controlled
15 substance analog;
- 16 (6) prior drug screening records of the applicant or recipient indicating unlawful use of a
17 controlled substance or controlled substance analog; or
- 18 (7) positive visual identification of controlled substances or drug paraphernalia at the
19 residence of an applicant or recipient or on the person of the applicant or recipient.

20 (d) The cost of administering the drug screen shall be deducted from the applicant's first
21 payment of cash assistance or from a recipient's the first payment after re-eligibility. If the drug
22 screen is negative, the costs shall be reimbursed to the applicant or recipient. Any applicant for or
23 recipient of cash assistance whose drug screening results in a positive test may request that the drug

1 screening specimen be sent to an alternative drug testing facility for additional drug screening. Any
2 applicant for or recipient of cash assistance who requests an additional drug screening at an
3 alternative drug testing facility shall be required to pay the cost of the alternative drug screen. Any
4 applicant or recipient who requested an additional drug screen and who tested negative for unlawful
5 use of a controlled substance and controlled substance analog shall be reimbursed for the cost of the
6 additional drug screening.

7 (e) Any applicant or recipient who refuses a drug screen is ineligible for cash assistance.

8 (f) Any applicant for or recipient of cash assistance who tests positive for unlawful
9 controlled substances or controlled substances analog shall complete a substance abuse treatment
10 program and a job skills program approved by the Secretary. Subject to applicable federal laws, any
11 applicant for or recipient of cash assistance who fails to complete or refuses to participate in the
12 substance abuse treatment program or job skills program as required under this subsection is
13 ineligible to receive cash assistance until completion of the substance abuse treatment and job skills
14 programs. Upon completion of both substance abuse treatment and job skills programs, the applicant
15 for or recipient of cash assistance is subject to periodic drug screening, as determined by the
16 Secretary in rule. Upon a second positive test for unlawful use of a controlled substance or
17 controlled substance analog, a recipient of cash assistance shall be ordered to complete a second
18 substance abuse treatment program and job skills program. He or she shall be terminated from cash
19 assistance for a period of twelve months, or until the recipient of cash assistance completes both
20 substance abuse treatment and job skills programs, whichever is later. Upon a third positive test for
21 unlawful use of a controlled substance or controlled substance analog, a recipient of cash assistance
22 shall be permanently terminated from cash assistance, subject to applicable federal law.

23 (f) (1) If an applicant for or recipient of cash assistance is ineligible for or terminated from

1 cash assistance as a result of a positive test for unlawful use of a controlled substance or controlled
2 substance analog, and the applicant for or recipient of cash assistance is the parent or legal guardian
3 of a minor child, an appropriate protective payee shall be designated to receive cash assistance on
4 behalf of the child. The parent or legal guardian of the minor child may choose to designate an
5 individual to receive cash assistance for the parent's or legal guardian's minor child, as approved by
6 the Secretary. Prior to the designated individual receiving any cash assistance, the Secretary shall
7 review whether reasonable suspicion exists that the designated individual is unlawfully using a
8 controlled substance or controlled substance analog.

9 (2) In addition, any individual designated to receive cash assistance on behalf of an eligible
10 minor child is subject to drug screening at any time when a reasonable suspicion exists that the
11 designated individual is unlawfully using a controlled substance or controlled substance analog. The
12 Secretary may use the same criteria as set forth in subsection (c) to determine whether reasonable
13 suspicion exists.

14 (3) Any designated individual whose drug screening results in a positive test may request
15 that the drug screening specimen be sent to an alternative drug testing facility for additional drug
16 screening. Any designated individual who requests an additional drug screening at an alternative
17 drug testing facility shall be required to pay the cost of the alternative drug screen. Any designated
18 individual who requested an additional drug screen and who tested negative for unlawful use of a
19 controlled substance and controlled substance analog shall be reimbursed for the cost of the
20 additional drug screening.

21 (4) Upon any positive test for unlawful use of a controlled substance or controlled substance
22 analog, the designated individual may not receive cash assistance on behalf of the parent's or legal
23 guardian's minor child, and another designated individual shall be selected by the Secretary to

1 receive cash assistance on behalf of the parent's or legal guardian's minor child.

2 (g) Except for hearings before the department the results of any drug screening administered
3 as part of the drug screening program authorized by this section are confidential and may not be
4 disclosed publicly.

5 (h) The Secretary shall propose emergency rules in accordance with the provisions of section
6 fifteen, article three, chapter twenty-nine-a of this code to implement the provisions of this article.
7 These rules shall include development of criteria for what is considered reasonable suspicion
8 including any necessary training of staff, an approval process for substance abuse treatment
9 programs and job skills programs and any other provisions deemed necessary by the Secretary.

NOTE: The purpose of this bill is to require the Secretary of the Department of Health and Human Resources to create a pilot program to provide drug screening of applicants for cash assistance.

This section is new; therefore, strike-throughs and underscoring have been omitted.