

COMMITTEE SUBSTITUTE

for

H. B. 2021

(BY DELEGATE(S) LANE)

(Originating in the House Committee on Finance)

[February 27, 2015]

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

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. Pilot program for drug screening of applicants for cash assistance.

1 (a) As used in this section:

2 (1) “Department” means the Department of Health and

3 Human Resources;

4 (2) “Drug Screening” means any chemical, biological, or

5 physical instrumental analysis administered by a laboratory

6 certified by the United States Department of Health and Human

7 Services or other licensing agency in this state for the purpose of

8 determining the presence or absence of a drug or its metabolites.

9 (3) “Secretary” means the Secretary of the department or his

10 or her designee.

11 (4) “Temporary Assistance for Needy Families Program”

12 means assistance provided through ongoing cash benefits

13 pursuant to 42 U.S.C. §601, et seq.

14 (b) The Secretary of the Department of Human Resources

15 shall implement and administer a pilot program in one or more

16 counties, subject to federal approval, a drug screening program
17 for any adult applying for the Temporary Assistance for Needy
18 Families Program based upon a reasonable suspicion that the
19 adult uses or is under the influence of a drug.

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

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

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

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

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

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

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

51 (3) The parent may choose to designate another person to
52 receive benefits for the minor child. The designated person shall
53 be an immediate family member or, if an immediate family

54 member is not available or the family member declines the
55 option, another person, may be designated.

56 (4) The designated person shall be approved by the
57 secretary. The designated person shall also undergo drug testing
58 before being approved to receive benefits on behalf of the child.

59 If the designated person tests positive for controlled substances,
60 he or she is ineligible to receive benefits on behalf of the child.

61 (f) (1) An applicant for the Temporary Assistance for Needy
62 Families Program, who is determined ineligible to receive
63 benefits by the secretary is ineligible to receive, and prohibited
64 from reapplying for, benefits for a period of two years from the
65 date that secretary determined the applicant to be ineligible. An
66 applicant determined to be ineligible under this section shall
67 submit to a mandatory drug test as part of a reapplication for the
68 Temporary Assistance for Needy Families Program; and

69 (2) An individual who is prohibited to receive benefits under
70 this section may reapply for benefits no sooner than six months
71 after the secretary declares he or she is ineligible for benefits, if
72 the individual can document the successful completion of a drug
73 treatment program as specified in this section,. An individual

74 who has met the requirements of this subsection and reappplies
75 for the Temporary Assistance for Needy Families Program shall
76 also pass a drug test. The cost of any drug testing and drug
77 treatment provided under this subsection is the responsibility of
78 the individual being tested and receiving treatment. An
79 individual may reapply for the Temporary Assistance for Needy
80 Families Program pursuant to the exception contained in this
81 subdivison only once.

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

88 (h) The secretary shall ensure the confidentiality of all drug
89 test results administered as part of this program. Drug test results
90 shall only be used for the purpose of determining eligibility for
91 the Temporary Assistance for Needy Families Program. At no
92 time may drug test results be released to any public or private

93 person or entity or any law-enforcement agency, except as
94 otherwise authorized by this section.

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

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

105 (k) (1)An individual convicted under federal or state law of
106 any offense which is classified as a felony within West Virginia
107 which has as an element the possession, use, or distribution of a
108 controlled substance, as defined by 21 U.S.C. §802(6) shall not
109 be eligible for assistance under any state program funded under
110 part A of title IV of the Social Security Act, or benefits under the
111 food stamp program (as defined in 3(h) the Food Stamp Act of

112 1977) or any state program carried out under the Food Stamp
113 Act of 1977.

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

120 (1) The secretary shall report to the Joint Committee on
121 Government and Finance by December 31, 2015 on the status of
122 the pilot program described in this section, and on December 31,
123 2016 on the pilot program. The report shall include, but not be
124 limited to: (1) the number of applicants who were deemed
125 ineligible to receive benefits under the program because of a
126 positive test for controlled substances, (2) the number of
127 applicants that are deemed ineligible because of a conviction of
128 a drug-related offense or felony as described in this section, and
129 (3) the number of those applicants that receive benefits
130 successful completion of a drug treatment program as specified
131 in this section.