

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Engrossed

Committee Substitute

for

Committee Substitute

for

Senate Bill 60

BY SENATORS GAUNCH, TRUMP, BOSO, BLAIR, RUCKER

AND SYPOLT

[Originating in the Committee on Finance; reported on

March 23, 2017]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §9-8-1, §9-8-2, §9-8-3, §9-8-4, §9-8-5, §9-8-6, §9-8-7, §9-8-8, §9-8-9, §9-8-
3 10, §9-8-11, §9-8-12, §9-8-13 and §9-8-14, all relating to eligibility and fraud requirements
4 for public assistance; defining terms; requiring the Department of Health and Human
5 Resources to implement work requirements for applicants for the Supplemental Nutrition
6 Assistance Program (SNAP); requiring discontinuance of a federal waiver; setting forth
7 what meets work requirements; setting out exceptions to work requirements; providing for
8 a good cause exception; allowing for a federal waiver; providing for rulemaking for
9 suspension of benefits for noncompliance; providing for an asset test for SNAP benefits;
10 requiring accessing information of various federal, state and miscellaneous sources;
11 prohibiting payment of SNAP benefits in specified instances; requiring cooperation with
12 the Bureau for Child Support Enforcement; requiring a design or establishment of a
13 computerized income, asset and identity verification system for Temporary Assistance for
14 Needy Families (TANF); allowing for contracting with a third-party vendor; setting out
15 required contract terms; requiring accessing information of various federal, state and
16 miscellaneous sources for TANF; requiring identity authentication as a condition to receive
17 public assistance; setting forth notice requirements and right to a hearing; requiring
18 referrals for fraud, misrepresentation and inadequate documentation; requiring report to
19 the Governor and Legislature; setting forth prohibitions on the use of an electronic benefit
20 transfer card; tracking out-of-state spending of SNAP and TANF benefits; and providing
21 for rulemaking.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 article, designated §9-8-1, §9-8-2, §9-8-3, §9-8-4, §9-8-5, §9-8-6, §9-8-7, §9-8-8, §9-8-9, §9-8-
3 10, §9-8-11, §9-8-12, §9-8-13 and §9-8-14, all to read as follows:

ARTICLE 8. ELIGIBILITY AND FRAUD REQUIREMENTS FOR PUBLIC ASSISTANCE.

PART I. DEFINED TERMS.

§9-8-1. Definitions.

1 The following words have the following meanings:

2 (1) "Able bodied" means a person between the ages of eighteen and forty-nine who has
3 no dependents and is not disabled.

4 (2) "Asset" or "asset test" means, for the purposes of this article, all assets of the members
5 of the applicant's household, including:

6 (A) All bank accounts, excluding retirement accounts of members of the household;

7 (B) All cash, excluding the first \$2,000 of members of the household;

8 (C) All lottery and gambling income of the household whether received as a lump sum or
9 installment payments;

10 (D) All real estate, excluding the primary household residence and surrounding lot; and

11 (E) All other personal property, excluding personal belongings, household goods and one
12 vehicle.

13 (3) "Applicant" or "recipient" means a person who is applying for, or currently receiving,
14 public assistance in the State of West Virginia from the department.

15 (4) "Department" means the West Virginia Department of Health and Human Resources.

16 (5) "Electronic benefit transfer" or "EBT" means any electronic system which allows the
17 department to issue and track benefits via a magnetically encoded payment card.

18 (6) "Household" means the same as that term is defined in 7 CFR §273.1(a) and (b).

19 (7) "Public assistance" means government benefits provided to qualifying individuals on
20 the basis of need to provide basic necessities to individuals and their families. These shall
21 include, but are not limited to, the following:

22 (A) Supplemental Nutrition Assistance Program or SNAP;

23 (B) Medicaid; and

24 (C) Temporary Assistance to Needy Families or TANF.

25 (8) "Secretary" means the Secretary of the West Virginia Department of Health and Human

26 Resources.

27 (9) "Work" or "working" means:

28 (A) Work in exchange for money;

29 (B) Work in exchange for goods or services ("in kind" work);

30 (C) Unpaid work, verified under standards established by the department in rule; or

31 (D) Any combination thereof.

PART II. ELIGIBILITY FOR SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM.

§9-8-2. Work requirements.

1 (a) Beginning October 1, 2017, the department shall implement the work requirements for
2 recipients of Supplemental Nutrition Assistance Program benefits as required pursuant to 7 U. S.
3 C. §2015(o) in counties where they deem there to be sufficient opportunists for recipients for work
4 or volunteerism.

5 (b) If a recipient resides in a county which the department has deemed contains sufficient
6 work or volunteerism opportunities the applicant for supplemental nutrition assistance benefits
7 shall:

8 (1) Be required to work at least twenty hours per week, averaged monthly, or eighty hours
9 a month; or

10 (2) Participate in, and comply with, the requirements of a work program of twenty hours
11 per week, as determined by the department in rule; or

12 (3) Any combination of working and/or participating in a work program for a total of twenty
13 hours per week, as determined by the department in rule; or

14 (4) Participate in, and comply with, a workfare program as set out in 7 CFR 273.24(a)(3).

15 (c) As determined by the department, if an individual would have worked an average of
16 twenty hours per week but missed some work for good cause, the individual shall be considered

17 to have met the work requirement if the absence from work is temporary and the individual retains
18 his or her job. Good cause shall include circumstances beyond the individual's control, such as,
19 but not limited to, illness, illness of another household member requiring the presence of the
20 member, a household emergency, or the unavailability of transportation.

21 (d) If the department determines that a waiver, or an amendment to a waiver, is necessary
22 to implement a policy that complies with 7 CFR 273.24, they shall request the waiver or the
23 amendment to the waiver from the United States Department of Agriculture.

24 (e) The department shall propose rules for legislative approval in accordance with the
25 provisions of article three, chapter twenty-nine-a of this code on the suspension of benefits for
26 applicants who fail to comply with the work requirements as set forth in this section and for a plan
27 for implementation of the work requirements in counties which they deem to have sufficient work
28 or volunteerism opportunities.

§9-8-3. Asset test.

1 (a) For the purposes of determining eligibility for receipt of SNAP benefits, the department
2 shall conduct an asset test on all members of the applicant's household. The allowable financial
3 resources for eligibility for SNAP shall be those specified in 7 USC §2014(g)(1).

4 (b) Prior to determining eligibility for SNAP benefits, the department shall access
5 information for every member of the applicant's household from, at a minimum, the following
6 federal, state and miscellaneous sources:

7 (1) Federal sources:

8 (A) The Internal Revenue Service for earned and unearned income information;

9 (B) The United States Social Security Administration for:

10 (i) Earned income information;

11 (ii) Death register information;

12 (iii) Prisoner information or incarceration status;

13 (iv) Beneficiary records and earnings information maintained in the Beneficiary and
14 Earnings Data Exchange database;

15 (v) Earnings and pension information maintained in the Beneficiary Earnings Exchange
16 Record System database; and

17 (vi) Supplemental security income information maintained in the SSI State Data Exchange
18 database; and

19 (C) The United States Department of Health and Human Services for:

20 (i) Income and employment information maintained in its National Directory of New Hires
21 database;

22 (ii) Federal data sources maintained by the Office of Child Support Enforcement; and

23 (iii) Veterans' benefits information in coordination with the department and the West
24 Virginia Department of Veterans' Assistance in the federal Public Assistance Reporting
25 Information System database.

26 (2) States sources:

27 (A) Department of Health and Human Resources databases, including, but not limited to:

28 (i) Bureau for Child Support Enforcement for income and employment information;

29 (ii) Bureau for Children and Families for child care services information; and

30 (iii) Enrollment status in other public assistance programs;

31 (B) West Virginia Division of Labor for:

32 (i) Employment information;

33 (ii) Employer weekly, monthly, and/or quarterly reports of income and unemployment
34 insurance payments; and

35 (iii) Utility payments information maintained by the state under the Low Income Home
36 Energy Assistance Program;

37 (C) West Virginia Low Income Assistance Program for emergency utility payment
38 information; and

39 (D) West Virginia Consolidated Public Retirement Board for earnings and pension
40 information.

41 (3) Miscellaneous sources:

42 (i) Any existing real-time database of persons currently receiving benefits in other states,
43 such as the National Accuracy Clearinghouse; and

44 (ii) Any databases maintained by the West Virginia Lottery Commission.

45 (c) Prior to determining eligibility, the department shall access information for every
46 member of the applicant's household from the following public records:

47 (1) A nationwide public records data source of physical asset ownership. This may include,
48 but is not limited to, real property, automobiles, watercraft, aircraft and luxury vehicles, or any
49 other vehicle owned by the applicant and recipient of assistance; and

50 (2) National and local financial institutions in order to locate undisclosed depository
51 accounts or verify account balances of disclosed accounts.

52 (d) If every member of the household receives supplemental security income the
53 provisions of this article do not apply.

§9-8-4. Cooperation in child support enforcement.

1 Any applicant for SNAP benefits who is greater than six months in arrears in a child
2 support obligation entered pursuant to the provisions of article eleven, chapter forty-eight of this
3 code shall be required to cooperate with the West Virginia Bureau for Child Support Enforcement
4 as a condition of eligibility as set forth in 7 CFR §273.11(o) and (p).

PART III. FRAUD PREVENTION.

§9-8-5. Income and identity verification.

1 (a) By December 31, 2017, the department shall redesign an existing system or establish
2 a new computerized income, asset and identity eligibility verification system or contract with a
3 third-party vendor to verify eligibility, eliminate the duplication of assistance, and deter waste,
4 fraud and abuse in each public assistance program which it administers.

5 (b) The department may contract with a third-party vendor to develop a system to provide
6 a service or verify income, assets and identity eligibility of applicants to prevent fraud,
7 misrepresentation and inadequate documentation when determining eligibility for public
8 assistance. This system or service shall be accessed prior to determining eligibility, periodically
9 between eligibility redeterminations, and during eligibility redeterminations and reviews. The
10 department may contract with a vendor to provide information to facilitate reviews of recipient
11 eligibility conducted by the department.

12 (c) Any contract entered into as provided in this article shall provide at a minimum:

13 (1) Establishment of the annual savings from implementation of the verification system
14 and provide that the savings shall exceed the total yearly cost to the state for implementing the
15 verification system, otherwise, in the department's discretion, the contract for the verification
16 system may not be renewed; and

17 (2) A noncompete clause that precludes the primary vendor from bidding futures contracts
18 in this state to operate any system of enrollment services for a reasonable amount of time, as
19 determined by the department through the bidding process.

20 (d) Nothing in this article precludes the department from continuing to conduct additional
21 eligibility verification processes currently in practice.

§9-8-6. Eligibility verification.

1 All applications for benefits must be processed through a system as set forth in this article.
2 Complete applications shall be processed within ten days of receipt or the minimum period
3 required by federal law. Prior to determining eligibility, the department shall access information
4 for every applicant from the following federal, state and other sources:

5 (1) Federal sources:

6 (A) The Internal Revenue Service for earned and unearned income information;

7 (B) The United States Social Security Administration for:

8 (i) Earned income information;

- 9 (ii) Death register information;
- 10 (iii) Prisoner information;
- 11 (iv) Beneficiary records and earnings information maintained in the Beneficiary and
12 Earnings Data Exchange database;
- 13 (v) Earnings and pension information maintained in the Beneficiary Earnings Exchange
14 Record System database; and
- 15 (vi) Supplemental security income information maintained in the SSI State Data Exchange
16 database;
- 17 (C) The United States Department of Health and Human Services for:
- 18 (i) Income and employment information maintained in its National Directory of New Hires
19 database;
- 20 (ii) Federal data sources maintained by the Office of Child Support Enforcement; and
- 21 (iii) Veterans' benefits information in coordination with the department and the West
22 Virginia Department of Veterans' Assistance in the federal Public Assistance Reporting
23 Information System database;
- 24 (D) United States Citizenship and Immigration Services for status information;
- 25 (E) United States Department of Housing and Urban Development Public Housing and
26 Section 8 Housing Assistance for payment information; and
- 27 (F) United States Federal Bureau of Investigation for national fleeing felon information.
- 28 (2) States sources:
- 29 (A) Department of Health and Human Resources databases, including, but not limited to:
- 30 (i) Bureau for Child Support Enforcement for income and employment information;
- 31 (ii) Bureau for Children and Families for child care services information;
- 32 (B) West Virginia Division of Labor for:
- 33 (i) Employment information;

34 (ii) Employer weekly, monthly, and/or quarterly reports of income and unemployment
35 insurance payments; and

36 (iii) Utility payments information maintained by the state under the Low Income Home
37 Energy Assistance Program;

38 (C) West Virginia Low Income Assistance Program for emergency utility payment
39 information; and

40 (D) West Virginia Consolidated Public Retirement Board for earnings and pension
41 information.

42 (3) Other sources:

43 (i) Any existing real-time database of persons currently receiving benefits in other states,
44 such as the National Accuracy Clearinghouse;

45 (ii) An available database of persons who currently hold a license, permit or certificate
46 from any state agency, the cost of which exceeds \$500;

47 (iii) Wage reporting and similar information maintained by states contiguous to West
48 Virginia; and

49 (iv) A database which is substantially similar to, or a successor of, a database established
50 in this article.

51 (G) Prior to determining eligibility the department shall access information for every
52 applicant from, at a minimum, the following public records:

53 (1) A nationwide public records data source of physical asset ownership. This may include,
54 but is not limited to, real property, automobiles, watercraft, aircraft and luxury vehicles, or any
55 other vehicle owned by the applicant and recipient of assistance;

56 (2) A nationwide public records data source of incarcerated individuals;

57 (3) A nationwide best address and driver's license data source to verify that individuals
58 are residents of the state;

59 (4) A comprehensive public records database from which the department can identify
60 potential identity fraud or identity theft that can closely associate name, social security number,
61 date of birth, phone and address information;

62 (5) National and local financial institutions in order to locate undisclosed depository
63 accounts or verify account balances of disclosed accounts; and

64 (6) Outstanding default or arrest warrant information maintained by the Criminal History
65 Systems Board, the Criminal Justice Information System, and the Warrant Management System;

§9-8-7. Identity authentication.

1 Prior to awarding public assistance, applicants for benefits must complete a computerized
2 identity authentication process to confirm the identity of the applicant. This shall be done with a
3 knowledge-based questionnaire consisting of financial and/or personal questions. The
4 questionnaire must provide support for persons without a bank account or those who have poor
5 access to financial and banking services or who do not have an established credit history. The
6 questionnaire may be submitted online, in-person or via telephone.

§9-8-8. Case review.

1 (a) If the information obtained from the review provided in this article does not result in the
2 department finding a discrepancy or change in an applicant's or recipient's circumstances
3 affecting eligibility, the department shall take no further action.

4 (b) If the review results in a discrepancy, the department shall promptly redetermine
5 eligibility.

6 (c) Public assistance shall not be granted to a household if any member of the household
7 has been found guilty of fraudulent activity directly related to any public assistance program.

8 (d) Any applicant for public assistance benefits who is greater than six months in arrears
9 in a child support obligation entered pursuant to the provisions of article eleven, chapter forty-
10 eight of this code is not eligible for public assistance benefits until such time as he or she enters

11 into a payment arrangement with the West Virginia Bureau for Child Support Enforcement or is
12 found by said bureau to have no ability to pay their child support obligation.

§9-8-9. Notice and right to be heard.

1 (a) An applicant shall be given written notice and the opportunity to explain any issues
2 with the application or redetermination as set forth in section eight of this article. Self-declarations
3 by applicants or recipients shall not be accepted as verification of categorical and financial
4 eligibility during eligibility evaluations, reviews and redeterminations.

5 (b) The notice given to the applicant or recipient is required to describe the circumstances
6 of the issue, the manner in which the applicant or recipient may respond and the consequences
7 of failing to take action. The applicant or recipient shall have ten days to respond. If the applicant
8 does not respond, the department shall take appropriate action. The department may request
9 additional information as it finds necessary to reach a decision.

10 (c) If an applicant or recipient responds, he or she shall respond in writing and may:

11 (1) Disagree with the findings of the department. The department shall reinvestigate the
12 matter if the applicant or recipient disagrees. If the department finds that there has been an error,
13 the department shall take immediate action to correct it. If the department determines that there
14 is no error, the department shall determine the effect on the applicant's or recipient's case and
15 take appropriate action. Written notice of the department's action shall be given to the applicant
16 or recipient; or

17 (2) Agree with the findings of the department. The department shall determine the effect
18 on the applicant's or recipient's case and take appropriate action. Written notice of the
19 department's action shall be given to the applicant or recipient.

20 (d) If the applicant fails to respond to the notice, the department shall deny or discontinue
21 assistance for failure to cooperate. The applicant shall be given notice of intent to deny or
22 discontinue assistance. Eligibility for assistance may not be established or reestablished until the
23 issue has been resolved.

§9-8-10. Referrals for fraud, misrepresentation or inadequate documentation.

1 (a) After the case review as set forth in section eight of this article, the department may
2 refer cases of suspected fraud to the office of Inspector General within the department. That
3 office shall take appropriate action, including civil penalties or referral to an appropriate
4 prosecuting attorney for criminal prosecution.

5 (b) In cases of substantiated fraud, upon conviction, the state shall review all appropriate
6 legal options. These may include, but are not limited to, removal from other public assistance
7 programs and garnishment of wages or state income tax refunds until the department recovers
8 an equal amount of benefits fraudulently claimed.

9 (c) The department may refer suspected cases of fraud, misrepresentation or inadequate
10 documentation to appropriate agencies, divisions or departments for review of eligibility issues in
11 other public assistance programs. This should also include cases in which an individual is
12 determined to be no longer eligible for the original program.

§9-8-11. Reporting to the Governor and Legislature.

1 The department shall prepare an annual report by December 31 each year to the Governor
2 and Legislative Oversight Commission on Health and Human Resources Accountability. The
3 report shall contain information on the effectiveness and general findings of the eligibility
4 verification system, including the number of cases reviewed, the number of case closures, the
5 number of referrals for criminal prosecution, recovery of improper payment, collection of civil
6 penalties, the outcomes of cases referred to the office of Inspector General and any savings that
7 have resulted from the system.

§9-8-12. Prohibitions on use of electronic benefit transfer cards.

1 (a) To ensure that public assistance program funds are used for their intended purposes,
2 funds available on electronic benefit transfer cards may not be used to purchase alcohol, liquor
3 or imitation liquor, cigarettes, tobacco products, bail, gambling activities, lottery tickets, tattoos,
4 travel services provided by a travel agent, money transmission to locations abroad, sexually

5 oriented adult materials, concert tickets, professional or collegiate sporting event tickets, or tickets
6 for other entertainment events intended for the general public.

7 (b) Electronic benefit transfer card transactions are prohibited at all casinos, gaming
8 establishments, tattoo parlors, massage parlors, body piercing parlors, spas, nail salons, lingerie
9 shops, vapor cigarette stores, psychic or fortune-telling businesses, bail bond companies, video
10 arcades, movie theaters, swimming pools, cruise ships, theme parks, dog or horse racing
11 facilities, pari-mutuel facilities, sexually oriented businesses, retail establishments which provide
12 adult-oriented entertainment in which performers disrobe or perform in an unclothed state for
13 entertainment, and businesses or retail establishments where minors under age eighteen are not
14 permitted.

15 (c) Upon enrollment, the department shall provide all applicants with an itemized list of
16 prohibited purchases, including those specified in this section, and make such list available on
17 the department's website.

18 (d) If a recipient is found to have violated the provisions of this section, the department
19 shall issue a warning in writing to the recipient. The recipient shall be subject to disqualification of
20 benefits for up to three months following the first offense, for up to one year following the second
21 offense and a permanent termination of benefits following the third offense, unless expressly
22 prohibited by federal law.

§9-8-13. Tracking out-of-state spending.

1 (a) The department shall post on its websites and provide to the Joint Committee on
2 Government and Finance a report of Supplemental Nutrition Assistance Program and Temporary
3 Assistance for Needy Families benefit spending on or before December 31 of each year.

4 (b) The report required by this section shall include:

5 (1) The dollar amount and number of transactions of Supplemental Nutrition Assistance
6 Program benefits that are accessed or spent out-of-state, by state;

7 (2) The dollar amount and number of transactions of Temporary Assistance for Needy
8 Families benefits that are accessed or spent out-of-state, by state;

9 (3) The dollar amount, number of transactions and times of transactions of Supplemental
10 Nutrition Assistance Program benefits that are accessed or spent in-state, by retailer, institution
11 or location; and

12 (4) The dollar amount, number of transactions and time of Temporary Assistance for
13 Needy Families transactions of benefits that are accessed or spent in-state, disaggregated by
14 retailer, institution or location.

15 (c) The report required pursuant to this section shall not identify individual recipients.

PART IV. RULEMAKING.

§9-8-14. Rulemaking.

1 The secretary may promulgate rules for legislative approval in accordance with the
2 provisions of article three, chapter twenty-nine-a of this code which he or she finds necessary to
3 effectuate the provisions of this article.