

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4046

**FISCAL
NOTE**

BY DELEGATES FRICH, SOBONYA, HOLLEN, FOSTER AND

OVERINGTON

[Introduced January 12, 2018; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §9-3-6 of the Code of West Virginia, 1931, as amended, relating to
 2 drug screening of applicants for cash assistance; expanding means of drug testing to
 3 include blood, urine and saliva.

Be it enacted by the Legislature of West Virginia:

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) "Applicant" means a person who is applying for benefits from the Temporary
 3 Assistance for Needy Families Program.

4 (2) "Board of Review" means the board established in ~~§9-2-6(2)~~ §9-2-6(13) of this code.

5 (3) "Caseworker" means a person employed by the department with responsibility for
 6 making a reasonable suspicion determination during the application process for Temporary
 7 Assistance for Needy Families.

8 (4) "Child Protective Services" means the agency within the department responsible for
 9 investigating reports of child abuse and neglect as required in §49-2-802 of this code.

10 (5) "Department" means the Department of Health and Human Resources.

11 (6) "Drug screen" or "drug screening" means any analysis regarding substance abuse
 12 conducted by the Department of Health and Human Resources on applicants for assistance from
 13 the Temporary Assistance for Needy Families program.

14 (7) "Drug test" or "drug testing" means a drug test which tests urine or, subject to federal
 15 approval, other bodily fluids including blood and saliva, for Amphetamines (amphetamine and
 16 methamphetamine) Cocaine, Marijuana, Opiates (codeine and morphine), Phencyclidine,
 17 Barbiturates, Benzodiazepines, Methadone, Propoxyphene and Expanded Opiates (oxycodone,
 18 hydromorphone, hydrocodone, oxymorphone).

19 (8) "Secretary" means the secretary of the department or his or her designee.

20 (9) "Temporary Assistance for Needy Families Program" means assistance provided

21 through ongoing cash benefits pursuant to 42 U. S. C. §601, *et seq.*, operated in West Virginia as
22 the West Virginia Works Program pursuant to article nine of this chapter.

23 (b) Subject to federal approval, the secretary shall implement and administer a three-year
24 pilot program to drug screen any adult applying for assistance from the Temporary Assistance for
25 Needy Families Program. The secretary shall seek the necessary federal approval immediately
26 following the enactment of this section and the program shall begin within sixty days of receiving
27 federal approval.

28 (c) Reasonable suspicion exists if:

29 (1) A case worker determines, based upon the result of the drug screen, that the applicant
30 demonstrates qualities indicative of substance abuse based upon the indicators of the drug
31 screen; or

32 (2) An applicant has been convicted of a drug-related offense within the three years
33 immediately prior to an application for Temporary Assistance for Needy Families Program and
34 whose conviction becomes known as a result of a drug screen as set forth in this section.

35 (d) Presentation of a valid prescription for a detected substance that is prescribed by a
36 health care provider authorized to prescribe a controlled substance is an absolute defense for
37 failure of any drug test administered under the provisions of this section.

38 (e) Upon a determination by the case worker of reasonable suspicion as set forth in this
39 section an applicant shall be required to complete a drug test. The cost of administering the drug
40 test and initial substance abuse testing program is the responsibility of the Department of Health
41 and Human Resources. Any applicant whose drug test results are positive may request that the
42 drug test specimen be sent to an alternative drug-testing facility for additional drug testing. Any
43 applicant who requests an additional drug test at an alternative drug-testing facility shall be
44 required to pay the cost of the alternative drug test.

45 (f) Any applicant who has a positive drug test shall complete a substance abuse treatment
46 and counseling program and a job skills program approved by the secretary. An applicant may

47 continue to receive benefits from the Temporary Assistance for Needy Families program while
48 participating in the substance abuse treatment and counseling program or job skills program.
49 Upon completion of both a substance abuse treatment and counseling program and a job skills
50 program, the applicant is subject to periodic drug screening and testing as determined by the
51 secretary in rule. Subject to applicable federal laws, any applicant for Temporary Assistance for
52 Needy Families program who fails to complete, or refuses to participate in, the substance abuse
53 treatment and counseling program or job skills program as required under this subsection is
54 ineligible to receive Temporary Assistance for Needy Families until he or she is successfully
55 enrolled in substance abuse treatment and counseling and job skills programs. Upon a second
56 positive drug test, an applicant shall be ordered to complete a second substance abuse treatment
57 and counseling program and job skills program. He or she shall be suspended from the Temporary
58 Assistance for Needy Families program for a period of twelve months, or until he or she completes
59 both a substance abuse treatment and counseling program and a job skills program. Upon a third
60 positive drug test an applicant shall be permanently terminated from the Temporary Assistance
61 for Needy Families Program subject to applicable federal law.

62 (g) Any applicant who refuses a drug screen or a drug test is ineligible for assistance.

63 (h) The secretary shall order an investigation and home visit from Child Protective
64 Services on any applicant whose benefits are suspended and who has not designated a protective
65 payee or whose benefits are terminated due to failure to pass a drug test. This investigation and
66 home visit may include a face-to-face interview with the child, if appropriate; the development of
67 a protection plan; and, if necessary for the health and well-being of the child, may also involve
68 law enforcement. This investigation and home visit shall be followed by a report detailing
69 recommended action which Child Protective Services shall undertake. Child Protective Services
70 is responsible for providing, directing or coordinating the appropriate and timely delivery of
71 services to any child who is the subject of any investigation and home visit conducted pursuant
72 to this section. In cases where Child Protective Services determines that the best interests of the

73 child requires court action, they shall initiate the appropriate legal proceeding.

74 (i) Any other adult members of a household that includes a person declared ineligible for
75 the Temporary Assistance for Needy Families program pursuant to this section shall, if otherwise
76 eligible, continue to receive Temporary Assistance for Needy Families benefits.

77 (j)(1) No dependent child's eligibility for benefits under the Temporary Assistance for
78 Needy Families program may be affected by a parent's failure to pass a drug test.

79 (2) If pursuant to this section a parent is deemed ineligible for the Temporary Assistance
80 for Needy Families program, the dependent child's eligibility is not affected and an appropriate
81 protective payee shall be designated to receive benefits on behalf of the child.

82 (3) The parent may choose to designate another person as a protective payee to receive
83 benefits for the minor child. The designated person shall be an immediate family member, or if an
84 immediate family member is not available or declines the option, another person may be
85 designated.

86 (4) The secretary shall screen and approve the designated person.

87 (k)(1) An applicant who is determined by the secretary to be ineligible to receive benefits
88 pursuant to subsection (f) of this section due to a failure to participate in a substance abuse
89 treatment and counseling program or a job skills program who can later document successful
90 completion of a drug treatment program approved by the secretary may reapply for benefits six
91 months after the completion of the substance abuse treatment and counseling program or job
92 skills program. An applicant who has met the requirements of this subdivision and reapplies is
93 also required to submit to a drug test and is subject to the provisions of subsection (f) of this
94 section.

95 (2) An applicant may reapply only once pursuant to the exceptions contained in this
96 subsection.

97 (3) The cost of any drug screen or test and drug treatment provided under subsection (k)
98 is the responsibility of the individual being screened and receiving treatment.

99 (l) An applicant who is denied assistance under this section may request a review of the
100 denial by the Board of Review. The results of a drug screen or test are admissible without further
101 authentication or qualification in the review of denial by the Board of Review and in any appeal.
102 The Board of Review shall provide a fair, impartial and expeditious grievance and appeal process
103 to applicants who have been denied Temporary Assistance for Needy Families pursuant to the
104 provisions of this section. The Board of Review shall make findings regarding the denial of benefits
105 and issue a decision which either verifies the denial or reverses the decision to deny benefits.
106 Any applicant adversely affected or aggrieved by a final decision or order of the Board of Review
107 may seek judicial review of that decision.

108 (m) The secretary shall ensure the confidentiality of all drug screen and drug test results
109 administered as part of this program. Drug screen and test results shall be used only for the
110 purpose of determining eligibility for the Temporary Assistance for Needy Families program. At
111 no time may drug screen or test results be released to any public or private person or entity or
112 any law-enforcement agency, except as otherwise authorized by this section.

113 (n) The secretary shall promulgate emergency rules pursuant to the provisions of §29A-
114 3-1 *et seq.* to prescribe the design, operation and standards for the implementation of this section.

115 (o) A person who intentionally misrepresents any material fact in an application filed under
116 the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be
117 punished by a fine of not less than \$100 nor more than \$1,000 or by confinement in jail not to
118 exceed six months, or by both fine and confinement.

119 (p) The secretary shall report to the Joint Committee on Government and Finance by
120 December 31, 2016, and annually after that until the conclusion of the pilot program on the status
121 of the federal approval and pilot program described in this section. The report shall include, but is
122 not limited to:

123 (1) The total number of applicants who were deemed ineligible to receive benefits under
124 the program due to a positive drug test for controlled substances;

125 (2) The number of applicants for whom there was a reasonable suspicion due to a
126 conviction of a drug-related offense within the five years prior to an application for assistance;

127 (3) The number of those applicants that receive benefits after successful completion of a
128 drug treatment program as specified in this section; and

129 (4) The total cost to operate the program.

130 (q) Should federal approval not be given for any portion of the program as set forth in this
131 section, the secretary shall implement the program to meet the federal objections and continue to
132 operate a three-year pilot program consistent with the purpose of this section.

133 (r) For the purposes of the pilot program contained in this section, pursuant to the authority
134 and option granted by 21 U. S. C. §862a(d)(1)(A) to the states, West Virginia hereby exempts all
135 persons domiciled within the state from the application of 21 U. S. C. §862a(a).

NOTE: The purpose of this bill is to expand the method of drug testing from urine to include other bodily fluids.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.