

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 2615**

BY DELEGATES PACK AND ROHRBACH

[Introduced February 19, 2021; Referred to the  
Committee on Health and Human Resources]

1 A BILL to amend and reenact §9-3-6 of the Code of West Virginia, 1931, as amended, relating to  
2 the program for drug screening of applicants for cash assistance.

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

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

#### **§9-3-6. ~~Pilot program~~ 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 ~~subdivision (2), section six, article~~  
5 ~~two, chapter nine~~ §9-2-6(13) of this code.

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

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

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

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

15 (7) "Drug test" or "drug testing" means a drug test which tests urine for amphetamines  
16 (amphetamine and methamphetamine) cocaine, marijuana, opiates (codeine and morphine),  
17 phencyclidine, barbiturates, benzodiazepines, methadone, propoxyphene, and expanded opiates  
18 (oxycodone, 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 §9-9-1 *et seq.* of this code.

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.~~ The secretary shall administer this program at least until December 31, 2022.  
28 The secretary may administer this program after such date.

29 (c) Reasonable suspicion exists if:

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

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

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

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

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

48 continue to receive benefits from the Temporary Assistance for Needy Families program while  
49 participating in the substance abuse treatment and counseling program or job skills program.  
50 Upon completion of both a substance abuse treatment and counseling program and a job skills  
51 program, the applicant is subject to periodic drug screening and testing as determined by the  
52 secretary in rule. Subject to applicable federal laws, any applicant for Temporary Assistance for  
53 Needy Families program who fails to complete, or refuses to participate in, the substance abuse  
54 treatment and counseling program or job skills program as required under this subsection is  
55 ineligible to receive Temporary Assistance for Needy Families until he or she is successfully  
56 enrolled in substance abuse treatment and counseling and job skills programs. Upon a second  
57 positive drug test, an applicant shall be ordered to complete a second substance abuse treatment  
58 and counseling program and job skills program. He or she shall be suspended from the Temporary  
59 Assistance for Needy Families program for a period of 12 months, or until he or she completes  
60 both a substance abuse treatment and counseling program and a job skills program. Upon a third  
61 positive drug test an applicant shall be permanently terminated from the Temporary Assistance  
62 for Needy Families Program subject to applicable federal law.

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

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

74 child requires court action, it shall initiate the appropriate legal proceeding.

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

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

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

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

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

88 (k)(1) An applicant who is determined by the secretary to be ineligible to receive benefits  
89 pursuant to §9-3-6(f) of this code due to a failure to participate in a substance abuse treatment  
90 and counseling program or a job skills program who can later document successful completion of  
91 a drug treatment program approved by the secretary may reapply for benefits six months after  
92 the completion of the substance abuse treatment and counseling program or job skills program.  
93 An applicant who has met the requirements of this subdivision and reapplies is also required to  
94 submit to a drug test and is subject to the provisions of §9-3-6(f) of this code.

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 §9-3-6(k) of this  
98 code 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.* of this code to prescribe the design, operation, and standards for the implementation  
115 of this section.

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to extend the sunset provision of the program until December 31, 2022, and to provide the Secretary discretion for the program's extension thereafter.

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