

Senate Bill No. 417

(By Senators Carmichael, Blair, Green, D. Hall, Nohe and Walters)

[Introduced March 4, 2013; referred to the Committee on Health and Human Resources; then to the Committee on the Judiciary; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §4-1B-1, §4-1B-2 and §4-1B-3; to amend said code by adding thereto a new section, designated §9-3-6; and to amend said code by adding thereto a new section, designated §21A-6-18, all relating to the Legislature; mandatory drug testing and treatment for members of the Legislature and withholding of compensation; human services; unemployment compensation; application for and granting of assistance; and implementing random drug testing for recipients of federal-state, state assistance or unemployment compensation benefits.

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 article, designated §4-1B-1, §4-1B-2 and

1 §4-1B-3; that said code be amended by adding thereto a new section,
2 designated §9-3-6; and that said code be amended by adding thereto
3 a new section, designated §21A-6-18, all to read as follows:

4 **CHAPTER 4. THE LEGISLATURE.**

5 **ARTICLE 1B. DRUG TESTING.**

6 **§4-1B-1. Purpose.**

7 The purpose of this article is to demonstrate leadership and
8 accountability on the important issue of illegal drug usage. Every
9 elected or appointed member of the West Virginia Legislature shall
10 submit to the same drug test prescribed by the Commissioner of the
11 Division of Human Services for recipients of federal-state and
12 state assistance and recipients of unemployment compensation.

13 **§4-1B-2. Drug testing for members of the Legislature; treatment.**

14 (a) Drug testing shall be taken within the first thirty days
15 of assuming the office of Senator or Delegate. Every elected or
16 appointed member of the West Virginia Legislature shall submit to
17 the drug testing program prescribed by the Commissioner of the
18 Division of Human Services. Failure to submit to this testing
19 shall have the same result as twice failing a drug test. Each
20 individual to be tested, before the test is conducted, is to be
21 informed that he or she may, but is not required to, advise the
22 agent administering the test of any over-the-counter medication and

1 of any legally obtained prescription medication he or she is
2 taking. Each individual to be tested must be assured a reasonable
3 degree of privacy while producing and submitting a sample for drug
4 testing, consistent with the state's need to ensure the reliability
5 of the sample.

6 (b) Any elected or appointed member of the West Virginia
7 Legislature who fails an initial drug test shall be required to
8 submit to a second drug test no less than thirty days following the
9 initial drug test, but no later than sixty days therefrom.

10 (c) A member of the Legislature may not be considered to have
11 failed any such test if there is a positive test result that is for
12 a legally obtained medication prescribed to that person which is
13 being used for its indicated purpose.

14 (d) Compensation shall be withheld if a member of the
15 Legislature twice fails a drug test for illegal consumption of
16 those controlled substances which the commissioner designates:
17 *Provided*, That the commissioner shall refer that member of the
18 Legislature who tests positive for the use of a controlled
19 substance under this section to an appropriate substance abuse
20 treatment program, which may include a faith-based program,
21 approved by the division.

22 **§4-1B-3. Report to Legislature of program's effectiveness.**

23 The commissioner shall report to the Legislature on the

1 observed effectiveness of drug testing, after the testing process
2 established in this article has been in place for two years.

3 **CHAPTER 9. HUMAN SERVICES.**

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

5 **§9-3-6. Drug testing for recipients of federal-state and state
6 assistance.**

7 (a) The Commissioner of the Division of Human Services shall
8 institute a drug testing program for controlled substances for all
9 applicants for and recipients of temporary assistance for needy
10 families cash (TANF) benefits. The program shall contain, at a
11 minimum, random testing, probable cause testing, testing at the
12 time of application and treatment for substance abuse. The
13 controlled substances for which tests shall be conducted shall be
14 determined by the commissioner. An individual may not be
15 considered to have failed any such test if there is a positive test
16 result that is for a legally obtained medication prescribed to that
17 person which is being used for its indicated purpose.

18 (b) Ineligibility generally:

19 (1) The commissioner shall deny, or otherwise consider
20 ineligible, any applicant for federal-state or state assistance in
21 the form of temporary assistance for needy families cash benefits,
22 if the applicant or recipient twice fails a drug test for illegal

1 consumption of those controlled substances which the commissioner
2 designates: *Provided*, That the commissioner shall refer a work-
3 eligible applicant or work-eligible recipient who tests positive
4 for the use of a controlled substance under this section to an
5 appropriate substance abuse treatment program, which may include a
6 faith-based program, approved by the division.

7 (2) Other members of a household that includes a person who
8 has been declared ineligible for temporary assistance for needy
9 families assistance shall, if otherwise eligible, continue to
10 receive temporary assistance for needy families benefits.

11 (A) A dependent child's eligibility for TANF benefits may not
12 be affected by a parent's failure to pass a drug test.

13 (B) An appropriate protective payee shall be designated to
14 receive benefits on behalf of the child.

15 (C) The parent may choose to designate another individual to
16 receive benefits for the parent's minor child. The designated
17 individual must be an immediate family member or, if an immediate
18 family member is not available or the family member declines the
19 designation, another individual, approved by the division, may be
20 so designated. The designated individual must also undergo drug
21 testing before being approved to receive benefits on behalf of the
22 child. If the designated individual tests positive for controlled
23 substances, he or she is ineligible to receive benefits on behalf

1 of the child.

2 (c) Any applicant for, or recipient of, federal-state or state
3 assistance in the form of temporary assistance for needy families
4 cash benefits shall submit to the commissioner's drug testing
5 program as a requirement for eligibility or continued receipt of
6 such assistance. Failure to submit to this testing shall have the
7 same result as twice failing a drug test. Each individual to be
8 tested, before the test is conducted, is to be informed that he or
9 she may, but is not required to, advise the agent administering the
10 test of any over-the-counter medication and of any legally obtained
11 prescription medication he or she is taking. Each individual to be
12 tested must be assured a reasonable degree of privacy while
13 producing and submitting a sample for drug testing, consistent with
14 the state's need to ensure the reliability of the sample.

15 (d) Any applicant for, or recipient of, federal-state or state
16 assistance in the form of temporary assistance for needy families
17 cash benefits who fails an initial drug test shall be required to
18 submit to a second drug test no less than thirty days following the
19 initial drug test, but no later than sixty days therefrom. The
20 commissioner may not deny, or otherwise determine ineligible, any
21 applicant or recipient until he or she has failed the second drug
22 test.

23 (e) The commissioner may not deny, or otherwise determine

1 ineligible, any applicant or recipient who fails the second drug
2 test if the applicant or recipient immediately enrolls in a drug
3 treatment program authorized by the Commissioner of the Division of
4 Human Services.

5 (f) Reapplication following ineligibility:

6 (1) Any applicant for, or recipient of, federal-state or state
7 assistance in the form of temporary assistance for needy families
8 cash benefits who is denied, or otherwise determined ineligible to
9 receive benefits by the commissioner following a failure of an
10 initial drug test and the mandatory secondary test, shall be
11 ineligible to receive, and prohibited from reapplying for, these
12 benefits for a period of one year from the date that commissioner
13 denied the applicant's or recipient's claim or determined the
14 applicant or recipient to be ineligible. Any applicant or
15 recipient denied or determined to be ineligible under this section
16 shall submit to a mandatory drug test as part of a reapplication
17 for federal-state or state assistance in the form of temporary
18 assistance for needy families cash benefits.

19 (2) Any individual who is forbidden to receive benefits under
20 this section may reapply for these benefits no sooner than six
21 months after the commissioner declares he or she is ineligible for
22 the benefits if the individual can document the successful
23 completion of a drug treatment program authorized by the

1 Commissioner of the Division of Human Services. An individual who
2 has met the requirements of this subsection and reapplies for
3 benefits must also pass an initial drug test. The cost of any drug
4 testing and drug treatment provided under this section is the
5 responsibility of the individual being tested and receiving
6 treatment. An individual may reapply for benefits pursuant to the
7 exception contained in this subsection only once.

8 (g) The commissioner shall ensure that applicants and
9 recipients chosen for random drug testing are selected at random,
10 and not by any other criteria, including, but not limited to,
11 suspicion of drug use, previous drug use or criminal conviction for
12 drug use or possession.

13 (h) The commissioner shall ensure the confidentiality of all
14 drug test results administered as part of the program. Drug test
15 results shall only be used for the purpose of denying, or
16 determining eligibility for continued receipt of, federal-state or
17 state assistance in the form of temporary assistance for needy
18 families cash benefits. Drug test results may not be released to
19 any public or private person or entity or any law-enforcement
20 agency, except as otherwise authorized by this code.

21 (i) The commissioner shall report to the Legislature on the
22 observed effectiveness of drug testing, after the testing process
23 established in this section has been in place for two years.

1 **CHAPTER 21A. UNEMPLOYMENT COMPENSATION.**

2 **ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.**

3 **§21A-6-18. Drug testing for recipients of unemployment**
4 **compensation.**

5 (a) The Commissioner of the Bureau of Employment Programs
6 shall institute a drug testing program for controlled substances
7 for all applicants for and recipients of unemployment compensation
8 benefits under this chapter. The program shall contain, at a
9 minimum, random testing, probable cause testing, testing at the
10 time of application and treatment for substance abuse. The
11 controlled substances for which tests shall be conducted shall be
12 determined by the commissioner. An individual may not be
13 considered to have failed any such test if there is a positive test
14 result that is for a legally obtained medication prescribed to that
15 person which is being used for its indicated purpose.

16 (b) The commissioner shall deny, or otherwise consider
17 ineligible, any applicant for unemployment compensation benefits ,
18 if the applicant or recipient twice fails a drug test for illegal
19 consumption of those controlled substances which the commissioner
20 designates: *Provided*, That the commissioner shall refer a work-
21 eligible applicant or work-eligible recipient who tests positive
22 for the use of a controlled substance under this section to an

1 appropriate substance abuse treatment program approved by the
2 commissioner.

3 (c) Any applicant for, or recipient of unemployment
4 compensation benefits shall submit to the commissioner's drug
5 testing program as a requirement for eligibility or continued
6 receipt of such benefits. Failure to submit to this testing shall
7 have the same result as twice failing a drug test. Each individual
8 to be tested, before the test is conducted, is to be informed that
9 he or she may, but is not required to, advise the agent
10 administering the test of any over-the-counter medication and of
11 any legally obtained prescription medication he or she is taking.
12 Each individual to be tested must be assured a reasonable degree of
13 privacy while producing and submitting a sample for drug testing,
14 consistent with the state's need to ensure the reliability of the
15 sample.

16 (d) Any applicant for, or recipient of unemployment
17 compensation benefits who fails an initial drug test shall be
18 required to submit to a second drug test no less than thirty days
19 following the initial drug test, but no later than sixty days
20 therefrom. The commissioner may not deny, or otherwise determine
21 ineligible, any applicant or recipient until he or she has failed
22 the second drug test.

23 (e) The commissioner may not deny, or otherwise determine

1 ineligible, any applicant or recipient who fails the second drug
2 test if the applicant or recipient immediately enrolls in a drug
3 treatment program authorized by the commissioner.

4 (f) Reapplication following ineligibility:

5 (1) Any applicant for, or recipient of, unemployment
6 compensation benefits who is denied, or otherwise determined
7 ineligible to receive benefits by the commissioner following a
8 failure of an initial drug test and the mandatory secondary test,
9 shall be ineligible to receive, and prohibited from reapplying for,
10 these benefits for a period of one year from the date that the
11 commissioner denied the applicant's or recipient's claim or
12 determined the applicant or recipient to be ineligible. Any
13 applicant or recipient denied or determined to be ineligible under
14 this section shall submit to a mandatory drug test as part of a
15 reapplication for unemployment compensation benefits.

16 (2) Any individual who is forbidden to receive benefits under
17 this section may reapply for these benefits no sooner than six
18 months after the commissioner declares he or she is ineligible for
19 the benefits if the individual can document the successful
20 completion of a drug treatment program authorized by the
21 Commissioner of the Bureau of Employment Programs. An individual
22 who has met the requirements of this subsection and reapplies for
23 benefits must also pass an initial drug test. The cost of any drug

1 testing and drug treatment provided under this section is the
2 responsibility of the individual being tested and receiving
3 treatment. An individual may reapply for benefits pursuant to the
4 exception contained in this subsection only once.

5 (g) The commissioner shall ensure that applicants and
6 recipients chosen for random drug testing are selected at random,
7 and not by any other criteria, including, but not limited to,
8 suspicion of drug use, previous drug use or criminal conviction for
9 drug use or possession.

10 (h) The commissioner shall ensure the confidentiality of all
11 drug test results administered as part of the program. Drug test
12 results shall only be used for the purpose of denying, or
13 determining eligibility for continued receipt of unemployment
14 compensation benefits. Drug test results may not be released to
15 any public or private person or entity or any law-enforcement
16 agency, except as otherwise authorized by this code.

17 (i) The commissioner shall report to the Legislature on the
18 observed effectiveness of drug testing, after the testing process
19 established in this section has been in place for two years.

NOTE: The purpose of this bill is to create a drug testing program for applicants and recipients of temporary assistance for needy families cash benefits; and for recipients of unemployment benefits. Any applicant or recipient who fails an initial drug test will be required to pass a second drug test in the following

thirty to sixty days to maintain eligibility for or recipients of these benefits. Failing the secondary drug test results in ineligibility for benefits for a period of one year, and requires a mandatory drug test as part of a reapplication for benefits. The bill provides for a substance abuse treatment program. The bill provides for protective or vendor payments to a third-party payee for the benefit of the members of the household. The bill also ensures confidentiality of records. Finally, the bill provides for mandatory drug testing for members of the Legislature based on the drug testing program prescribed by the Commissioner of the Division of Human Services. In addition to the requirement of participating in a substance abuse treatment program for a member of the Legislature, the bill provides for the withholding of compensation until drug treatment is undertaken.

Article §4-1B-1, §4-1B-2 and §4-1B-3, are new; therefore, strike-throughs and underscoring have been omitted.

Sections §9-3-6 and §21A-6-18 are new; therefore, strike-throughs and underscoring have been omitted.