

Senate Bill No. 348

(By Senators Blair, Carmichael and Karnes)

[Introduced January 28, 2015; referred to the Committee on Health and Human Resources; 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 section, designated §9-3-6, relating to creation of a pilot program by the Secretary of the Department of Health and Human Resources to provide drug screening of applicants for cash assistance.

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.

(a) The Secretary of the Department of Health and Human Resource shall implement a one-year pilot program in three counties for drug screening of applicants for cash assistance as provided in this section.

(b) The program for drug screening applicants for cash assistance as a condition of eligibility for cash assistance and persons receiving cash assistance as a condition of continued receipt of cash

1 assistance shall be established, subject to applicable federal law, by the secretary on or before
2 January 1, 2016. Under the program of drug screening, the secretary shall order a drug screening of
3 an applicant for or a recipient of cash assistance at any time when reasonable suspicion exists that
4 the applicant for or recipient of cash assistance is unlawfully using a controlled substance or
5 controlled substance analog. The secretary may use any information obtained by the secretary to
6 determine whether the reasonable suspicion exists, including, but not limited to, an applicant's or
7 recipient's demeanor, missed appointments and arrest or other police records, previous employment
8 or application for employment in an occupation or industry that regularly conducts drug screening,
9 termination from previous employment due to unlawful use of a controlled substance or controlled
10 substance analog or prior drug screening records of the applicant or recipient indicating unlawful use
11 of a controlled substance or controlled substance analog.

12 (c) Any applicant for or recipient of cash assistance whose drug screening results in a positive
13 test may request that the drug screening specimen be sent to a different drug testing facility for an
14 additional drug screening. Any applicant for or recipient of cash assistance who requests an
15 additional drug screening at a different drug testing facility shall be required to pay the cost of drug
16 screening. The applicant or recipient who took the additional drug screening and who tested
17 negative for unlawful use of a controlled substance and controlled substance analog shall be
18 reimbursed for the cost of the additional drug screening.

19 (d) Any applicant for or recipient of cash assistance who tests positive for unlawful use of
20 a controlled substance or controlled substance analog is required to complete a substance abuse
21 treatment program and a job skills program approved by the secretary. Subject to applicable federal
22 laws, any applicant for or recipient of cash assistance who fails to complete or refuses to participate

1 in the substance abuse treatment program or job skills program as required under this subsection is
2 ineligible to receive cash assistance until completion of the substance abuse treatment and job skills
3 programs. Upon completion of both substance abuse treatment and job skills programs, the applicant
4 for or recipient of cash assistance is subject to periodic drug screening, as determined by the
5 secretary. Upon a second positive test for unlawful use of a controlled substance or controlled
6 substance analog, a recipient of cash assistance shall be ordered to complete again a substance abuse
7 treatment program and job skills program, and shall be terminated from cash assistance for a period
8 of twelve months, or until the recipient of cash assistance completes both substance abuse treatment
9 and job skills programs, whichever is later. Upon a third positive test for unlawful use of a
10 controlled substance or controlled substance analog, a recipient of cash assistance shall be terminated
11 from cash assistance, subject to applicable federal law.

12 (e) (1) If an applicant for or recipient of cash assistance is ineligible for or terminated from
13 cash assistance as a result of a positive test for unlawful use of a controlled substance or controlled
14 substance analog, and the applicant for or recipient of cash assistance is the parent or legal guardian
15 of a minor child, an appropriate protective payee shall be designated to receive cash assistance on
16 behalf of the child. The parent or legal guardian of the minor child may choose to designate an
17 individual to receive cash assistance for the parent's or legal guardian's minor child, as approved by
18 the secretary. Prior to the designated individual receiving any cash assistance, the secretary shall
19 review whether reasonable suspicion exists that the designated individual is unlawfully using a
20 controlled substance or controlled substance analog.

21 (2) In addition, any individual designated to receive cash assistance on behalf of an eligible
22 minor child is subject to drug screening at any time when reasonable suspicion exists that the

1 designated individual is unlawfully using a controlled substance or controlled substance analog. The
2 secretary may use any information obtained by the secretary to determine whether reasonable
3 suspicion exists, including, but not limited to, the designated individual's demeanor, missed
4 appointments and arrest or other police records, previous employment or application for employment
5 in an occupation or industry that regularly conducts drug screening, termination from previous
6 employment due to unlawful use of a controlled substance or controlled substance analog or prior
7 drug screening records of the designated individual indicating unlawful use of a controlled substance
8 or controlled substance analog.

9 (3) A designated individual whose drug screening results in a positive test may request that
10 the drug screening specimen be sent to a different drug testing facility for an additional drug
11 screening. Any designated individual who requests an additional drug screening at a different drug
12 testing facility is required to pay the cost of drug screening. The designated individual who took the
13 additional drug screening and who tested negative for unlawful use of a controlled substance and
14 controlled substance analog shall be reimbursed for the cost of the additional drug screening.

15 (4) Upon any positive test for unlawful use of a controlled substance or controlled substance
16 analog, the designated individual may not receive cash assistance on behalf of the parent's or legal
17 guardian's minor child, and another designated individual shall be selected by the secretary to receive
18 cash assistance on behalf of the parent's or legal guardian's minor child.

19 (f) If a person has been convicted under federal or state law of any offense which is classified
20 as a felony by the law of the jurisdiction and which has as an element of the offense the manufacture,
21 cultivation, distribution, possession or use of a controlled substance or controlled substance analog,
22 and the date of conviction is on or after January 1, 2016, the person becomes forever ineligible to

1 receive any cash assistance unless the conviction is the person's first conviction. First-time offenders
2 convicted under federal or state law of any offense which is classified as a felony by the law of the
3 jurisdiction and which has as an element of the offense the manufacture, cultivation, distribution,
4 possession or use of a controlled substance or controlled substance analog, and the date of conviction
5 is on or after January 1, 2016, the person becomes ineligible to receive cash assistance for five years
6 from the date of conviction.

7 (g) Except for hearings before the department the results of any drug screening administered
8 as part of the drug screening program authorized by this section are confidential and may not be
9 disclosed publicly.

10 (h) As used in this section:

11 (1) "Cash assistance" means cash assistance provided to individuals under the provisions of
12 the department's Temporary Assistance for Needy Families Program.

13 (2) "Controlled substance" means the same as defined in section one hundred one, article one,
14 chapter sixty-a of this code.

15 (3) (A) "Controlled substance analog" means a substance that is intended for human
16 consumption, and:

17 (i) The chemical structure of which is substantially similar to the chemical structure of a
18 controlled substance;

19 (ii) Which has a stimulant, depressant or hallucinogenic effect on the central nervous system
20 substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous
21 system of a controlled substance included in the schedules I or II designated in article two, chapter
22 sixty-a of this code; or

1 (iii) With respect to a particular individual, which the individual represents or intends to have
2 a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar
3 to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled
4 substance included in the schedules I or II designated in article two, chapter sixty-a of this code.

5 (B) "Controlled substance analog" does not include:

6 (I) A controlled substance;

7 (ii) A substance for which there is an approved new drug application; or

8 (iii) A substance with respect to which an exemption is in effect for investigational use by
9 a particular person under section 505 of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 355,
10 to the extent conduct with respect to the substance is permitted by the exemption.

NOTE: The purpose of this bill is to require the Secretary of the Department of Health and Human Resources to create a pilot program to provide drug screening of applicants for cash assistance.

This section is new; therefore, strike-throughs and underscoring have been omitted.