

**Senate Bill No. 99**

(By Senators Carmichael, D. Hall and Blair)

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[Introduced January 14, 2015; referred to the Committee on Health and Human Resources; and

then to the Committee on the Judiciary.]

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**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 mandatory drug testing and treatment for members of the Legislature; 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 §4-1B-3; that said code be amended by adding thereto a new section, designated §9-3-6; and that said code be amended by adding thereto a new section, designated §21A-6-18, all to read as follows:

**CHAPTER 4. THE LEGISLATURE.**

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

2 **§4-1B-1. Purpose.**

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

8 **§4-1B-2. Drug testing for members of the Legislature; treatment.**

9           (a) Drug testing shall be taken within the first thirty days of assuming the office of Senator  
10 or Delegate. Every elected or appointed member of the West Virginia Legislature shall submit to the  
11 drug testing program prescribed by the Commissioner of the Department of Human Services. Failure  
12 to submit to this testing shall have the same result as twice failing a drug test. Each individual to be  
13 tested, before the test is conducted, is to be informed that he or she may, but is not required to, advise  
14 the agent administering the test of any over-the-counter medication and of any legally obtained  
15 prescription medication he or she is taking. Each individual to be tested must be assured a reasonable  
16 degree of privacy while producing and submitting a sample for drug testing, consistent with the  
17 state's need to ensure the reliability of the sample.

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

21           (c) A member of the Legislature may not be considered to have failed any such test if there

1 is a positive test result that is for a legally obtained medication prescribed to that person which is  
2 being used for its indicated purpose.

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

8 **§4-1B-3. Report to Legislature of program's effectiveness.**

9 The commissioner shall report to the Legislature on the observed effectiveness of drug  
10 testing, after the testing process established in this article has been in place for two years.

11 **CHAPTER 9. HUMAN SERVICES.**

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

13 **§9-3-6. Drug testing for recipients of federal-state and state assistance.**

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

1 (b) Ineligibility generally:

2 (1) The commissioner shall deny, or otherwise consider ineligible, any applicant for  
3 federal-state or state assistance in the form of temporary assistance for needy families cash benefits,  
4 if the applicant or recipient twice fails a drug test for illegal consumption of those controlled  
5 substances which the commissioner designates: *Provided*, That the commissioner shall refer a  
6 work-eligible applicant or work-eligible recipient who tests positive for the use of a controlled  
7 substance under this section to an appropriate substance abuse treatment program, which may  
8 include a faith-based program, approved by the division.

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

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

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

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

1 child.

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

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

16 (e) The commissioner may not deny, or otherwise determine ineligible, any applicant or  
17 recipient who fails the second drug test if the applicant or recipient immediately enrolls in a drug  
18 treatment program authorized by the Commissioner of the Division of Human Services.

19 (f) Reapplication following ineligibility:

20 (1) Any applicant for, or recipient of, federal-state or state assistance in the form of temporary  
21 assistance for needy families cash benefits who is denied, or otherwise determined ineligible to

1 receive benefits by the commissioner following a failure of an initial drug test and the mandatory  
2 secondary test, shall be ineligible to receive, and prohibited from reapplying for, these benefits for  
3 a period of one year from the date that commissioner denied the applicant's or recipient's claim or  
4 determined the applicant or recipient to be ineligible. Any applicant or recipient denied or  
5 determined to be ineligible under this section shall submit to a mandatory drug test as part of a  
6 reapplication for federal-state or state assistance in the form of temporary assistance for needy  
7 families cash benefits.

8           (2) Any individual who is forbidden to receive benefits under this section may reapply for  
9 these benefits no sooner than six months after the commissioner declares he or she is ineligible for  
10 the benefits if the individual can document the successful completion of a drug treatment program  
11 authorized by the Commissioner of the Division of Human Services. An individual who has met the  
12 requirements of this subsection and reapplies for benefits must also pass an initial drug test. The cost  
13 of any drug testing and drug treatment provided under this section is the responsibility of the  
14 individual being tested and receiving treatment. An individual may reapply for benefits pursuant to  
15 the exception contained in this subsection only once.

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

19           (h) The commissioner shall ensure the confidentiality of all drug test results administered as  
20 part of the program. Drug test results shall only be used for the purpose of denying, or determining  
21 eligibility for continued receipt of, federal-state or state assistance in the form of temporary

1 assistance for needy families cash benefits. Drug test results may not be released to any public or  
2 private person or entity or any law-enforcement agency, except as otherwise authorized by this code.

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

## 5 **CHAPTER 21A. UNEMPLOYMENT COMPENSATION.**

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

#### 7 **§21A-6-18. Drug testing for recipients of unemployment compensation.**

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

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

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

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

14           (e) The commissioner may not deny, or otherwise determine ineligible, any applicant or  
15 recipient who fails the second drug test if the applicant or recipient immediately enrolls in a drug  
16 treatment program authorized by the commissioner.

17           (f) Reapplication following ineligibility:

18           (1) Any applicant for, or recipient of, unemployment compensation benefits who is denied,  
19 or otherwise determined ineligible to receive benefits by the commissioner following a failure of an  
20 initial drug test and the mandatory secondary test, shall be ineligible to receive, and prohibited from  
21 reapplying for, these benefits for a period of one year from the date that the commissioner denied



1 the applicant's or recipient's claim or determined the applicant or recipient to be ineligible. Any  
2 applicant or recipient denied or determined to be ineligible under this section shall submit to a  
3 mandatory drug test as part of a reapplication for unemployment compensation benefits.

4 (2) Any individual who is forbidden to receive benefits under this section may reapply for  
5 these benefits no sooner than six months after the commissioner declares he or she is ineligible for  
6 the benefits if the individual can document the successful completion of a drug treatment program  
7 authorized by the Commissioner of the Bureau of Employment Programs. An individual who has  
8 met the requirements of this subsection and reapplies for benefits must also pass an initial drug test.  
9 The cost of any drug testing and drug treatment provided under this section is the responsibility of  
10 the individual being tested and receiving treatment. An individual may reapply for benefits pursuant  
11 to the exception contained in this subsection only once.

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

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

20 (i) The commissioner shall report to the Legislature on the observed effectiveness of drug  
21 testing, after the testing process 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.