

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4454

FISCAL
NOTE

BY DELEGATES UPSON, ESPINOSA, BORDER, SHOTT,

HOUSEHOLDER, O'NEAL, BLAIR, MCGEEHAN, IHLE,

KURCABA AND STATLER

[Introduced February 9, 2016; Referred

to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §9-10-1, §9-10-2, §9-10-3, §9-10-4, §9-10-5, §9-10-6, §9-10-7, §9-10-8, §9-
 3 10-9, §9-10-10, §9-10-11 and §9-10-12, all relating to welfare fraud prevention.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 article, designated §9-10-1, §9-10-2, §9-10-3, §9-10-4, §9-10-5, §9-10-6, §9-10-7, §9-10-8, §9-
 3 10-9, §9-10-10, §9-10-11 and §9-10-12, all to read as follows:

ARTICLE 10. WELFARE FRAUD PREVENTION ACT.

§ 9-10-1. Definitions.

1 This article may be known as the Welfare Fraud Prevention Act. For purposes of this
 2 article, the following definitions apply:

3 (1) "Department" means the state Division of Human Services.

4 (2) "Identity information" means an applicant or recipient's full name, aliases, date of birth,
 5 address, Social Security number and other related information.

6 (a) The department shall establish a computerized income, asset, and identity eligibility
 7 verification system in order to verify eligibility, eliminate the duplication of assistance, and deter
 8 waste, fraud and abuse within each respective assistance program administered by the
 9 department.

10 (b) The department shall enter into a competitively bid contract with a third-party vendor
 11 for the purposes of developing a system by which to verify the income, asset and identity eligibility
 12 of applicants to prevent fraud, misrepresentation and inadequate documentation when
 13 determining an applicant's eligibility for assistance prior to the distribution of benefits, periodically
 14 between eligibility redeterminations, and during eligibility redeterminations and reviews, as
 15 prescribed in this section. The department may also contract with a vendor to provide information
 16 to facilitate reviews of recipient eligibility conducted by the department.

17 (c) When the department enters into a contract with a third-party vendor for the purposes

18 of carrying out provisions of this article, the vendor, in partnership with the department, shall be
19 required by contract to establish annualized savings realized from implementation of the
20 verification system and savings shall exceed the total yearly cost to the state for implementing
21 the verification system.

22 (d) When the department enters into a contract with a third-party vendor, the payment
23 structure shall be based on a per-applicant rate and a performance bonus for achieving above a
24 predetermined rate of success of identifying waste, fraud and abuse.

25 (e) To avoid any conflict of interest, when the department enters into a contract with a
26 third-party vendor, that primary vendor may not currently or will not be allowed in the future to bid
27 on or be awarded a state contract to run enrollment services.

28 (f) Nothing in this article shall preclude the department from continuing to conduct
29 additional eligibility verification processes, not detailed in this article, that are currently in practice.

§9-10-2. Establishment of enhanced eligibility verification system.

1 (a) The department shall establish a computerized income, asset, and identity eligibility
2 verification system in order to verify eligibility, eliminate the duplication of assistance, and deter
3 waste, fraud and abuse within each respective assistance program administered by the
4 department.

5 (b) The department shall enter into a competitively bid contract with a third-party vendor
6 for the purposes of developing a system by which to verify the income, asset and identity eligibility
7 of applicants to prevent fraud, misrepresentation and inadequate documentation when
8 determining an applicant's eligibility for assistance prior to the distribution of benefits, periodically
9 between eligibility redeterminations, and during eligibility redeterminations and reviews, as
10 prescribed in this section. The department may also contract with a vendor to provide information
11 to facilitate reviews of recipient eligibility conducted by the department.

12 (c) When the department enters into a contract with a third-party vendor for the purposes
13 of carrying out provisions of this article, the vendor, in partnership with the department, shall be

14 required by contract to establish annualized savings realized from implementation of the
15 verification system and savings shall exceed the total yearly cost to the state for implementing
16 the verification system.

17 (d) When the department enters into a contract with a third-party vendor, the payment
18 structure shall be based on a per-applicant rate and a performance bonus for achieving above a
19 predetermined rate of success of identifying waste, fraud and abuse.

20 (e) To avoid any conflict of interest, when the department enters into a contract with a
21 third-party vendor, that primary vendor may not currently or will not be allowed in the future to bid
22 on or be awarded a state contract to run enrollment services.

23 (f) Nothing in this article shall preclude the department from continuing to conduct
24 additional eligibility verification processes, not detailed in this article, that are currently in practice.

§9-10-3. Enhanced eligibility verification process.

1 (a) All applications for benefits must be processed within a ten-day period or the minimum
2 required by federal law. Prior to awarding assistance, and on a quarterly basis thereafter, the
3 department shall match identity information of each respective applicant and recipient of
4 assistance from the department against the following:

5 (1) Earned and unearned income information maintained by the Internal Revenue Service;

6 (2) Employer weekly, monthly, and/or quarterly reports of income and unemployment
7 insurance payment information maintained by the state Division of Labor;

8 (3). Earned income information maintained by the U.S. Social Security Administration;

9 (4) Immigration status information maintained by U.S. Citizenship and Immigration
10 Services;

11 (5) Death register information maintained by the U.S. Social Security Administration;

12 (6) Prisoner information maintained by the U.S. Social Security Administration;

13 (7) Public Housing and Section 8 Housing Assistance payment information maintained by
14 the U.S. Department of Housing and Urban Development;

- 15 (8) National fleeing felon information maintained by the U.S. Federal Bureau of
16 Investigation;
- 17 (9) Wage reporting and similar information maintained by states contiguous to this state;
- 18 (10) Beneficiary records and earnings information maintained by the U.S. Social Security
19 Administration in its Beneficiary and Earnings Data Exchange (BENDEX) database;
- 20 (11) Earnings and pension information maintained by the U.S. Social Security
21 Administration in its Beneficiary Earnings Exchange Record System (BEERS) database;
- 22 (12) Employment information maintained by the state Division of Labor;
- 23 (13) Employment information maintained by the U.S. Department of Health and Human
24 Services in its National Directory of New Hires (NDNH) database;
- 25 (14) Supplemental security income information maintained by the U.S. Social Security
26 Administration in its SSI State Data Exchange (SDX) database;
- 27 (15) Veterans' benefits information maintained by the U.S. Department of Health and
28 Human Services, in coordination with the department and State Division of Veterans' Affairs, in
29 the federal Public Assistance Reporting Information System (PARIS) database;
- 30 (16) Child care services information maintained by the state Division of Human Services;
- 31 (17) Utility payments information maintained by the state under the Low Income Home
32 Energy Assistance Program;
- 33 (18) Emergency utility payment information maintained by state or local entities;
- 34 (19) A database of all persons who currently hold a license, permit, or certificate from any
35 state agency the cost of which exceeds \$500;
- 36 (20) Income and employment information maintained by the Child Support Enforcement
37 Division of the department and the U.S. Department of Health and Human Services' Office of
38 Child Support Enforcement;
- 39 (21) Earnings and pension information maintained by the West Virginia Consolidated
40 Public Retirement Board;

41 (22) Any existing real-time database of persons currently receiving benefits in other states,
42 such as the National Accuracy Clearinghouse; and

43 (23) A database which is substantially similar to or a successor of a database established
44 in this act.

45 (b) Prior to awarding assistance, and on a quarterly basis, the department shall match
46 identity information of each respective applicant and recipient of assistance from the department
47 against, at minimum, the following public records:

48 (1) A nationwide public records data source of physical asset ownership such as real
49 property, automobiles, watercraft, aircraft, and luxury vehicles, or any other vehicle owned by the
50 applicant and recipient of assistance;

51 (2) A nationwide public records data source of incarcerated individuals;

52 (3) A nationwide best-address and driver's license data source to verify individuals are
53 residents of the state;

54 (4) A comprehensive public records database that identifies potential identity fraud or
55 identity theft that can closely associate name, social security number, date of birth, phone and
56 address information;

57 (5) National and local financial institutions, in order to locate undisclosed depository
58 accounts or verify account balances of disclosed accounts;

59 (6) Outstanding default or arrest warrant information maintained by the criminal history
60 systems board, the criminal justice information system, and the warrant management system;
61 and

62 (7) A database which is substantially similar to or a successor of a database established
63 in this article.

§9-10-4. Enhanced identity authentication process.

1 Prior to awarding assistance, applicants for benefits must complete a computerized
2 identity authentication process that shall confirm the applicant owns the identity presented in the

3 application. The department shall review the respective applicant's or recipient's identity
4 ownership using the following procedures:

5 (1) Provide a knowledge-based quiz consisting of financial or personal questions. The quiz
6 must provide support for nonbanked or under-banked applicants who do not have an established
7 credit history.

8 (2) Require the quiz for applications submitted through all channels, including online, in-
9 person, and via phone.

§9-10-5. Discrepancies and case review.

1 (a) If a discrepancy results from an applicant or recipient's identity information and one or
2 more of the databases or information tools listed under section three or section four of this article,
3 the department shall review the respective applicant or recipient's case using the following
4 procedures:

5 (1) If the information discovered does not result in the department finding a discrepancy
6 or change in an applicant's or recipient's circumstances that may affect eligibility, the department
7 shall take no further action.

8 (2) If the information discovered under section three or section four of this article results
9 in the department finding a discrepancy or change in a recipient's circumstances that may affect
10 eligibility, the department shall promptly redetermine eligibility after receiving the information.

11 (3)(A) If the information discovered under section three or section four of this article results
12 in the department finding a discrepancy or change in an applicant's or recipient's circumstances
13 that may affect eligibility, the applicant or recipient shall be given an opportunity to explain the
14 discrepancy; provided, however, that self-declarations by applicants or recipients shall not be
15 accepted as verification of categorical and financial eligibility during eligibility evaluations, reviews,
16 and redeterminations.

17 (B) The department shall provide written notice to the applicant or recipient, which shall
18 describe in sufficient detail the circumstances of the discrepancy or change, the manner in which

19 the applicant or recipient may respond, and the consequences of failing to take action. The
20 applicant or recipient shall have ten business days, or the minimum required by state or federal
21 law, to respond in an attempt to resolve the discrepancy or change. The explanation provided by
22 the recipient or applicant shall be given in writing. After receiving the explanation, the department
23 may request additional documentation if it determines that there is risk of fraud,
24 misrepresentation, or inadequate documentation.

25 (4) If the applicant or recipient does not respond to the notice, the department shall deny
26 or discontinue assistance for failure to cooperate, in which case the department shall provide
27 notice of intent to deny or discontinue assistance. Eligibility for assistance shall not be established
28 or reestablished until the discrepancy or change has been resolved.

29 (5) If an applicant or recipient responds to the notice and disagrees with the findings of
30 the match between his or her identity information and one or more databases or information tools
31 listed under this article, the department shall reinvestigate the matter. If the department finds that
32 there has been an error, the department shall take immediate action to correct it and no further
33 action shall be taken. If, after an investigation, the department determines that there is no error,
34 the department shall determine the effect on the applicant's or recipient's case and take
35 appropriate action. Written notice of the department's action shall be given to the applicant or
36 recipient.

37 (6) If the applicant or recipient agrees with the findings of the match between the
38 applicant's or recipient's identity information and one or more databases or information tools listed
39 under this act, the department shall determine the effect on the applicant or recipient's case and
40 take appropriate action. Written notice of the department's action shall be given to the applicant
41 or recipient. In no case shall the department discontinue assistance as a result of a match
42 between the applicant's or recipient's identity information and one or more databases or
43 information tools listed under this article until the applicant or recipient has been given notice of
44 the discrepancy and the opportunity to respond as required under this act.

45 (b) The department shall promulgate rules and regulations necessary for the purposes of
46 carrying out provisions of this article.

§9-10-6. Referrals for fraud, misrepresentation, or inadequate documentation.

1 (a) After reviewing changes or discrepancies that may affect program eligibility, the
2 department shall refer suspected cases of fraud to the state Medicaid Fraud Control Unit or the
3 Investigations and Fraud Management Division of the department, for criminal prosecution,
4 recovery of improper payments, and collection of civil penalties.

5 (b) After reviewing changes or discrepancies that may affect program eligibility, the
6 department shall refer suspected cases of identity fraud to an appropriate prosecuting attorney
7 for criminal prosecution.

8 (c) In cases of fraud substantiated by the department, upon conviction the state should
9 review all legal options to remove enrollees from other public programs and garnish wages or
10 state income tax refunds until the state recovers an equal amount of benefits fraudulently claimed.

11 (d) After reviewing changes or discrepancies that may affect program eligibility, the
12 department shall refer suspected cases of fraud, misrepresentation, or inadequate documentation
13 to appropriate agencies, divisions, or departments for review of eligibility discrepancies in other
14 public programs. This should also include cases in which an individual is determined to be no
15 longer eligible for the original program.

§9-10-7. Implementation date and reporting.

1 (a) This act shall be implemented six months following legislative enactment.

2 (b) Six months following the act's implementation, and quarterly thereafter, the department
3 shall provide a written report to the Governor, Legislature, State Auditor and State Treasurer
4 detailing the effectiveness and general findings of the eligibility verification system, including the
5 number of cases reviewed, the number of case closures, the number of referrals for criminal
6 prosecution, recovery of improper payment, collection of civil penalties, the outcomes of cases
7 referred to the Medicaid Fraud Control Unit or the Investigations and Fraud Management Division

8 under this Act, and the savings that have resulted from the system.

§9-10-8. Transparency in Medicaid.

1 Following the precedent set by Medicare, the department shall release data that includes
2 but is not limited to the following: The physician's name and office locations; a provider's National
3 Provider Identifier (NPI); the type of service provided by Healthcare Common Procedure Coding
4 System (HCPCS) code; and whether the service was performed in a facility or office setting. This
5 public data shall also include the number of services, average submitted charges, average
6 allowed amount, average Medicaid payment, and a count of unique beneficiaries treated.

§9-10-9. Eliminate federal work waivers for SNAP beneficiaries.

1 The department shall not seek, apply for, accept or renew any waiver of requirements
2 established under 7 U.S.C. § 2015(o).

§9-10-10. Photo identification on electronic benefits transfer cards.

1 (a) The department shall place a photograph of the recipient on any electronic benefits
2 transfer card issued by the department, unless the recipient declines to have the photograph
3 included. When a recipient is a minor or otherwise incapacitated individual, a parent or legal
4 guardian of such recipient may have a photograph of the parent or legal guardian placed on the
5 card.

6 (b) The department shall explore opportunities with other state agencies, departments, or
7 divisions, including the Division of Motor Vehicles, to share photographs when available. The
8 department may sign one or more memorandum of understanding with such agencies,
9 departments, or divisions as necessary to implement this section.

§9-10-11. Prohibition of electronic benefits transfer spending at locations of vice and
luxury.

1 (a) Funds available on electronic benefit transfer cards may not be used to purchase
2 alcohol, liquor or imitation liquor, cigarettes, tobacco products, bail, gambling activities, lottery
3 tickets, tattoos, travel services provided by a travel agent, money transmission to locations

4 abroad, sexually oriented adult materials, concert tickets, professional or collegiate sporting event
5 tickets, or tickets for other entertainment events intended for the general public.

6 (b) Electronic benefit transfer card transactions are prohibited at all retail liquor stores,
7 casinos, gaming establishments, jewelry stores, tattoo parlors, massage parlors, body piercing
8 parlors, spas, nail salons, lingerie shops, tobacco paraphernalia stores, vapor cigarette stores,
9 psychic or fortune telling businesses, bail bond companies, video arcades, movie theaters,
10 swimming pools, cruise ships, theme parks, dog or horse racing facilities, pari-mutuel facilities,
11 sexually oriented businesses, retail establishments which provide adult-oriented entertainment in
12 which performers disrobe or perform in an unclothed state for entertainment, and businesses or
13 retail establishments where minors under age eighteen are not permitted.

14 (c) Upon enrollment, the department shall offer new applicants an itemized list of
15 prohibited purchases, including those specified in subsection (a), and make such a list available
16 on the department's website.

17 (d) The department shall prohibit establishments identified under subsection (b) of this
18 section B from operating ATMs that accept electronic benefit transfer cards. Businesses found in
19 violation of this subsection shall be subject to appropriate licensing sanctions.

20 (e) If a recipient is found to have violated subsection (a), of this section, the department
21 shall issue a warning in writing to the recipient. The recipient shall be subject to disqualification of
22 benefits for up to three months following the first offense and a permanent termination of benefits
23 following the second offense, unless expressly prohibited by federal law.

§9-10-12. Track out-of-state spending.

1 (a) The department shall post on its websites and make available on an annual basis to
2 the Legislature's Joint Committee on Government and Finance, the Speaker and Minority Leader
3 of the House of Delegates, the Senate President, and the Senate Minority Leader, a report of
4 Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy
5 Families (TANF) benefit spending.

6 (b) The report required under subsection (a), of this section shall include:

7 (1) The dollar amount and number of transactions of SNAP benefits that are accessed or
8 spent out-of-state, disaggregated by state;

9 (2) The dollar amount and number of transactions of TANF benefits that are accessed or
10 spent out-of-state, disaggregated by state;

11 (3) The dollar amount, number of transactions, and times of transactions of SNAP benefits
12 that are accessed or spent in-state, disaggregated by retailer, institution, or location; and

13 (4) The dollar amount, number of transactions, and time of transactions of TANF benefits
14 that are accessed or spent in-state, disaggregated by retailer, institution, or location.

15 (c) The report required under subsection (a), of this section shall be de-identified to prevent
16 identification of individual recipients.

NOTE: The purpose of this bill, creating the Welfare Fraud Prevention Act, is to establish or improve and maintain procedures for welfare fraud prevention.

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