

H. B. 4466

(By Delegates Ellington, Carmichael, Gearheart, Savilla, Overington, Howell, Duke, Romine, Ireland, J. Miller and Sigler)

[Introduced February 8, 2012; referred to the Committee on the Judiciary then 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 human services; application for and granting of assistance; and implementing drug testing for recipients of federal-state and state 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. Drug testing for recipients of federal-state and state assistance.

(a) The Commissioner of the Division of Human Services shall institute a drug testing program for controlled substances for all applicants for and recipients of temporary assistance for needy

1 families cash (TANF) benefits. The program shall contain, at a
2 minimum, random testing, probable cause testing, testing at the
3 time of application and treatment for substance abuse. The
4 controlled substances for which tests shall be conducted shall
5 include, at a minimum, amphetamines, tetrahydrocannabinol,
6 oxycodone, cocaine, phencyclidine (PCP), any opiate, barbiturate,
7 benzodiazepine, methamphetamine, propoxyphene and any tricyclic
8 antidepressants. An individual may not be considered to have
9 failed any such test if there is a positive test result that is for
10 a legally obtained medication prescribed to that person which is
11 being used for its indicated purpose.

12 (b) Ineligibility generally:

13 (1) The commissioner shall deny, or otherwise considerable
14 ineligible, any applicant for federal-state or state assistance in
15 the form of temporary assistance for needy families cash benefits,
16 if the applicant or recipient twice fails a drug test for illegal
17 consumption of those controlled substances which the commissioner
18 designates: Provided, That the commissioner shall refer a work-
19 eligible applicant or work-eligible recipient who tests positive
20 for the use of a controlled substance under this section to an
21 appropriate substance abuse treatment program approved by the
22 division.

23 (2) Other members of a household that includes a person who
24 has been declared ineligible for temporary assistance for needy

1 families assistance shall, if otherwise eligible, continue to
2 receive temporary assistance for needy families benefits.

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

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

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

17 (c) Any applicant for, or recipient of, federal-state or state
18 assistance in the form of temporary assistance for needy families
19 cash benefits shall submit to the commissioner's drug testing
20 program as a requirement for eligibility or continued receipt of
21 such assistance. Failure to submit to this testing shall have the
22 same result as twice failing a drug test. Each individual to be
23 tested, before the test is conducted, is to be informed that he or
24 she may, but is not required to, advise the agent administering the

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

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

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

19 (f) Reapplication following ineligibility:

20 (1) Any applicant for, or recipient of, federal-state or state
21 assistance in the form of temporary assistance for needy families
22 cash benefits who is denied, or otherwise determined ineligible to
23 receive benefits by the commissioner following a failure of an
24 initial drug test and the mandatory secondary test, shall be

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

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

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

1 drug use or possession.

2 (h) The commissioner shall ensure the confidentiality of all
3 drug test results administered as part of the program. Drug test
4 results shall only be used for the purpose of denying, or
5 determining eligibility for continued receipt of, federal-state or
6 state assistance in the form of temporary assistance for needy
7 families cash benefits. Drug test results may not be released to
8 any public or private person or entity or any law-enforcement
9 agency, except as otherwise authorized by this code.

10 (i) The commissioner shall report to the Legislature on the
11 observed effectiveness of drug testing, after the testing process
12 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. 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 two years, 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.

§9-3-6 is new; therefore, it has been completely underscored.

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