

H. B. 4433

(By Delegates Ellington, Arvon, Householder, Howell, Gearheart, Overington, Shott, Sobonya, Miller, Border and Lane)

[Introduced February 6, 2014; referred to the Committee on the Judiciary then Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-3-6, relating to 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 deny, or otherwise determine ineligible the following classes of persons:

(1) Any person convicted of a drug-related offense other than simple possession of an illegal controlled substance: Provided,

1 That, if the person agrees to undergo initial drug testing, he or
2 she shall be found to be eligible to apply for the benefits,
3 subject to the imposition of further mandatory drug testing not
4 inconsistent with the provisions of this code;

5 (2) Any person convicted of a felony: *Provided*, That, if the
6 person agrees to undergo initial drug testing, he or she shall be
7 found to be eligible to apply for the benefits, subject to the
8 imposition of further mandatory drug testing not inconsistent with
9 the provisions of this code; and

10 (3) Any mother who is an applicant for or recipient of
11 federal-state or state assistance in the form of temporary
12 assistance for needy families cash benefits, if she delivers an
13 infant addicted to certain controlled substances, not legally
14 prescribed, including amphetamines, tetrahydrocannabinol,
15 oxycodone, cocaine, phencyclidine (PCP), any opiate, barbiturate,
16 benzodiazepine, methamphetamine, propoxyphene, and any tricyclic
17 antidepressants: *Provided*, That, if the mother agrees to undergo
18 a course of substance abuse education and treatment as prescribed
19 in article fifteen, chapter sixty-two of this code, or the
20 substantial equivalent, she shall be found to be eligible to apply
21 for the benefits, subject to the imposition of further mandatory
22 drug testing not inconsistent with the provisions of this code.

23 (b) Other adult members of a household that includes a person
24 who 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 (c) No dependent child's eligibility for TANF benefits may be
4 affected by a parent's failure to pass a drug test.

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

7 (e) The mother may choose to designate another individual to
8 receive benefits for her minor child. The designated individual
9 must be an immediate family member or, if an immediate family
10 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 (f) Reapplication following ineligibility.-- (1) Any applicant
18 for, or recipient of federal-state or state assistance in the form
19 of temporary assistance for needy families cash benefits, who is
20 determined ineligible to receive benefits by the commissioner is
21 ineligible to receive, and prohibited from reapplying for, benefits
22 for a period of two years from the date that commissioner
23 determined the applicant or recipient to be ineligible. Any
24 applicant or recipient determined to be ineligible under this

1 section shall submit to a mandatory drug test as part of a
2 reapplication for federal-state or state assistance in the form of
3 temporary assistance for needy families cash benefits; and

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

15 (g) The commissioner is responsible for ensuring the
16 confidentiality of any and all drug test results administered as
17 part of the program. Drug test results shall only be used for the
18 purpose of denying, or determining eligibility for continued
19 receipt of, federal-state or state assistance in the form of
20 temporary assistance for needy families cash benefits. At no time
21 may drug test results be released to any public or private person
22 or entity or any law-enforcement agency, except as otherwise
23 authorized by this code. Presentation of a valid prescription of
24 the controlled substance detected is an absolute defense for

1 failure of any drug test administered under the provisions of this
2 section.

NOTE: The purpose of this bill is to create a procedure for any applicant or recipient of TANF benefits who fails an initial drug test and will be required to undergo treatment and to pass a second drug test to maintain eligibility for or recipients of such 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 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.

This section is new; therefore, it has been completely underscored.