

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4010

FISCAL
NOTE

BY DELEGATES ELLINGTON, SUMMERS, HOUSEHOLDER,
ROHRBACH, BORDER, WESTFALL, COOPER, IRELAND,
LANE, GEARHART AND EVANS, D

[Introduced January 15, 2016; Referred
to the Committee on Health and Human Resources then
the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section
 2 designated §9-3-6, relating to drug screening for applicants of benefits from the Temporary
 3 Assistance for Needy Families Program; requiring drug testing of applicants for whom
 4 there is a reasonable suspicion of substance abuse; creating a pilot program; setting forth
 5 an effective date; defining terms; providing basis for reasonable suspicion of drug use;
 6 requiring participation in a substance abuse treatment, counseling and job skills program
 7 with an adverse drug test; precluding assistance for refusal to take a drug test; establishing
 8 administrative review of decisions to deny benefits; providing a mechanism for dependent
 9 children to receive benefits if a parent is deemed ineligible; setting forth prohibition from
 10 benefits for an adverse drug test; requiring investigation by Child Protective Services upon
 11 an adverse drug test; setting forth a procedure for reapplication for benefits; authorizing
 12 rulemaking by the Department of Health and Human Resources; requiring results of the
 13 drug screen or drug test remain confidential; providing criminal penalties; requiring an
 14 annual report to the Legislature; setting out elements of the annual report; requiring federal
 15 approval of the program; requiring the secretary to modify the program to meet any federal
 16 objections and allowing for exceptions.

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 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.

1 (a) As used in this section:

2 (1) "Applicant" means a person who is applying for benefits from the Temporary
 3 Assistance for Needy Families Program.

4 (2) "Board of Review" means the board established in section six, subdivision thirteen of
 5 this article.

6 (3) “Caseworker” means a person employed by the department with responsibility for
7 making a reasonable suspicion determination during the application process for Temporary
8 Assistance for Needy Families.

9 (4) “Child Protective Services” means the agency within the department responsible for
10 investigating reports of child abuse and neglect as required in section eight hundred two, article
11 two, chapter forty-nine of this code.

12 (5) “Department” means the Department of Health and Human Resources.

13 (6) “Drug screen” or “drug screening” means any analysis regarding substance abuse
14 conducted by the Department of Health and Human Resources on applicants for assistance from
15 the Temporary Assistance for Needy Families program.

16 (7) “Drug test” of “drug testing” means a five panel drug test which tests urine for
17 Amphetamines (amphetamine and Methamphetamine) Cocaine, Marijuana, Opiates (codeine
18 and morphine), Phencyclidine, Barbiturates, Benzodiazepines, Methadone, Propoxyphene, and
19 Expanded Opiates (Oxycodone, Hydromorphone, Hydrocodone, Oxymorphone).

20 (8) “Secretary” means the secretary of the department or his or her designee.

21 (9) “Temporary Assistance for Needy Families Program” means assistance provided
22 through ongoing cash benefits pursuant to 42 U.S.C. §601, et seq. operated in West Virginia as
23 the West Virginia Works Program pursuant to article nine of this chapter.

24 (b) Subject to federal approval, the secretary shall implement and administer a three year
25 pilot program to drug screen any adult applying for assistance from the Temporary Assistance for
26 Needy Families Program. The secretary shall seek the necessary federal approval immediately
27 following the enactment of this section and program shall begin within sixty days of receiving
28 federal approval.

29 (c) Reasonable suspicion exists if:

30 (1) A case worker determines based upon the result of the drug screen that the applicant
31 demonstrates qualities indicative of substance abuse based upon the indicators of the drug

32 screen; or

33 (2) An applicant has been convicted of a drug-related offense within the five years
34 immediately prior to an application for Temporary Assistance for Needy Families Program and
35 whose conviction becomes known as a result of a drug screen as set forth in this section.

36 (d) Presentation of a valid prescription for a detected substance that is prescribed by a
37 health care provider authorized to prescribe a controlled substance is an absolute defense for
38 failure of any drug test administered under the provisions of this section.

39 (e) Upon a determination by the case worker of reasonable suspicion as set forth in this
40 section an applicant shall be required to complete a drug test. The cost of administering the drug
41 test is the responsibility of the Department of Health and Human Resources. Any applicant whose
42 drug test results are positive may request that the drug test specimen be sent to an alternative
43 drug testing facility for additional drug testing. Any applicant who requests an additional drug test
44 at an alternative drug testing facility shall be required to pay the cost of the alternative drug test.
45 Any applicant who requested an alternative drug test and who tests negative for unlawful use of
46 a controlled substance shall be reimbursed for the cost of the alternative drug test.

47 (f) Any applicant who has a positive drug test shall complete a substance abuse treatment
48 and counseling program and a job skills program approved by the secretary. An applicant may
49 continue to receive benefits from the Temporary Assistance for Needy Families program while
50 participating in the substance abuse treatment and counseling program or job skills program.
51 Upon completion of both a substance abuse treatment and counseling program and a job skills
52 program, the applicant is subject to periodic drug screening and testing as determined by the
53 secretary in rule. Subject to applicable federal laws, any applicant for Temporary Assistance for
54 Needy Families Program who fails to complete or refuses to participate in the substance abuse
55 treatment and counseling program or job skills program as required under this subsection is
56 ineligible to receive Temporary Assistance for Needy Families until he or she is successfully
57 enrolled in a substance abuse treatment and counseling and job skills programs. Upon a second

58 positive drug test an applicant shall be ordered to complete a second substance abuse treatment
59 and counseling program and job skills program. He or she shall be suspended from the
60 Temporary Assistance for Needy Families Program for a period of twelve months, or until he or
61 she completes both a substance abuse treatment and a job skills programs, whichever is later.
62 Upon a third positive drug test an applicant shall be permanently terminated from the Temporary
63 Assistance for Needy Families Program subject to applicable federal law.

64 (g) Any applicant who refuses a drug screen or a drug test is ineligible for assistance.

65 (h) The secretary shall order an investigation and home visit from Child Protective
66 Services on any applicant who is declared ineligible for failure to pass a drug test. This
67 investigation and home visit may include a face-to-face interview with the child, if appropriate, the
68 development of a protection plan and, if necessary for the health and well-being of the child, may
69 also involve law enforcement. This investigation and home visit shall be followed by a report
70 detailing recommended action which Child Protective Services shall undertake. Child Protective
71 Services is responsible for providing, directing or coordinating the appropriate and timely delivery
72 of services to any child who is the subject of any investigation and home visit conducted pursuant
73 to this section. In those cases where Child Protective Services determines that the best interests
74 of the child requires court action, they shall initiate the appropriate legal proceeding.

75 (i) Any other adult members of a household that includes a person declared ineligible for
76 the Temporary Assistance for Needy Families Program pursuant to this section shall, if otherwise
77 eligible, continue to receive Temporary Assistance for Needy Families benefits.

78 (j)(1) No dependent child's eligibility for benefits under the Temporary Assistance for
79 Needy Families Program may be affected by a parent's failure to pass a drug test.

80 (2) If pursuant to this section a parent is deemed ineligible for the Temporary Assistance
81 for Needy Families Program, the dependent child's eligibility is not affected and an appropriate
82 protective payee shall be designated to receive benefits on behalf of the child.

83 (3) The parent may choose to designate another person as a protective payee to receive

84 benefits for the minor child. The designated person shall be an immediate family member or, if an
85 immediate family member is not available or declines the option, another person may be
86 designated.

87 (4) The secretary shall screen and approve the designated person.

88 (k)(1) An applicant who is determined by the secretary to be ineligible to receive benefits
89 pursuant to subsection (f) of this section due to a failure to participate in substance abuse
90 treatment and counseling program or job skills program who can later document successful
91 completion of a drug treatment program approved by the secretary, may reapply for benefits six
92 months after the completion of the substance abuse treatment and counseling program or job
93 skills program. An applicant who has met the requirements of this subdivision and reapplies is
94 also required to submit to a drug test and is subject to the provisions of subsection (f) of this
95 section.

96 (2) An applicant may reapply only once pursuant to the exceptions contained in this
97 subsection.

98 (3) The cost of any drug screen or test and drug treatment provided under this subsection
99 is the responsibility of the individual being screened and receiving treatment.

100 (l) An applicant who is denied assistance under this section may request a review of the
101 denial by the Board of Review. The results of a drug screen or test are admissible without further
102 authentication or qualification in the review of denial by the Board of Review and in any appeal.
103 The Board of Review shall provide a fair, impartial and expeditious grievance and appeal process
104 to applicants who have been denied Temporary Assistance for Needy Families pursuant to the
105 provisions of this section. The Board of Review shall make findings regarding the denial of benefits
106 and issue a decision which either verifies the denial or reverses the decision to deny benefits.
107 Any applicant adversely affected or aggrieved by a final decision or order of the Board of Review
108 may seek judicial review of that decision.

109 (m) The secretary shall ensure the confidentiality of all drug screen and drug test results

110 administered as part of this program. Drug screen and test results shall only be used for the
111 purpose of determining eligibility for the Temporary Assistance for Needy Families Program. At
112 no time may drug screen or test results be released to any public or private person or entity or
113 any law-enforcement agency, except as otherwise authorized by this section.

114 (n) The secretary shall promulgate emergency rules pursuant to the provisions of article
115 three, chapter twenty-nine-a to prescribe the design, operation, and standards for the
116 implementation of this section.

117 (o) A person who intentionally misrepresents any material fact in an application filed under
118 the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be
119 punished by a fine of not less than \$100 nor more than \$1,000 or by confinement in jail not
120 exceeding six months or by both fine and confinement.

121 (p) The secretary shall report to the Joint Committee on Government and Finance by
122 December 31, 2016, and annually after that until the conclusion of the pilot program on the status
123 of the federal approval and pilot program described in this section. The report shall include, but is
124 not limited to:

125 (1) The total number of applicants who were deemed ineligible to receive benefits under
126 the program because of a positive drug test for controlled substances;

127 (2) The number of applicants for whom there was a reasonable suspicion because they
128 had a conviction of a drug-related offense within the five years prior to an application for
129 assistance;

130 (3) The number of those applicants that receive benefits after successful completion of a
131 drug treatment program as specified in this section; and

132 (4) The total cost to operate the program.

133 (q) Should federal approval not be given for any portion of the program as set forth in this
134 section, the secretary shall implement the program in a manner as to meet the federal objections
135 and continue to operate a three year pilot program consistent with the purpose of this section.

NOTE: The purpose of this bill is to require drug screening and testing of applicants for the Temporary Assistance for Needy Families Program for whom there is a reasonable suspicion of substance abuse.

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

This bill is recommended for passage during the 2016 Session of the Legislature by the Legislative Oversight Commission on Health and Human Resources Accountability.