

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

### **Committee Substitute**

**for**

### **Senate Bill 60**

BY SENATORS GAUNCH, TRUMP, BOSO, BLAIR, RUCKER

AND SYPOLT

[Originating in the Committee on Health and Human

Resources; reported on February 23, 2017]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §9-8-1, §9-8-2, §9-8-3, §9-8-4, §9-8-5, §9-8-6, §9-8-7, §9-8-8, §9-8-9, §9-8-  
3 10, §9-8-11, §9-8-12, §9-8-13 and §9-8-14, all relating to eligibility and fraud requirements  
4 for public assistance; defining terms; requiring the Department of Health and Human  
5 Resources to implement work requirements for applicants for the Supplemental Nutrition  
6 Assistance Program (SNAP); requiring discontinuance of a federal waiver; setting forth  
7 what meets work requirements; setting out exceptions to work requirements; providing for  
8 a good cause exception; allowing for a federal waiver; providing for rulemaking for  
9 suspension of benefits for noncompliance; providing for an asset test for SNAP benefits;  
10 requiring accessing information of various federal, state and miscellaneous sources;  
11 prohibiting payment of SNAP benefits in specified instances; requiring cooperation with  
12 the Bureau for Child Support Enforcement; requiring a design or establishment of a  
13 computerized income, asset and identity verification system for Temporary Assistance for  
14 Needy Families (TANF); allowing for contracting with a third-party vendor; setting out  
15 required contract terms; requiring accessing information of various federal, state and  
16 miscellaneous sources for TANF; requiring identity authentication as a condition to receive  
17 public assistance; requiring a semi-annual case review of all public assistance cases;  
18 setting forth notice requirements and the right to a hearing; requiring referrals for fraud,  
19 misrepresentation and inadequate documentation; requiring report to the Governor and  
20 Legislature; setting forth prohibitions on the use of an electronic benefit transfer card;  
21 tracking out-of-state spending of SNAP and TANF benefits; and providing for rulemaking.

*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 §9-8-1, §9-8-2, §9-8-3, §9-8-4, §9-8-5, §9-8-6, §9-8-7, §9-8-8, §9-8-9, §9-8-  
3 10, §9-8-11, §9-8-12, §9-8-13 and §9-8-14, all to read as follows:

**ARTICLE 8. ELIGIBILITY AND FRAUD REQUIREMENTS FOR PUBLIC ASSISTANCE.**

PART ONE. DEFINED TERMS.

**§9-8-1. Definitions.**

1           The following words have the following meanings:

2           (1) “Able bodied” means a person between the ages of 18 and 49 who has no dependents  
3 and is not disabled.

4           (2) “Asset” or “asset test” means, for the purposes of this article, all assets of the members  
5 of the applicant’s household, including:

6           (A) All bank accounts, excluding retirement accounts of members of the household;

7           (B) All cash, excluding the first \$2,000 of members of the household;

8           (C) All lottery and gambling income of the household whether received as a lump sum or  
9 installment payments;

10           (D) All real estate, excluding the primary household residence and surrounding lot; and

11           (E) All other personal property, excluding personal belongings, household goods and one  
12 vehicle.

13           (3) “Applicant” or “recipient” means a person who is applying for, or currently receiving,  
14 public assistance in the State of West Virginia from the department.

15           (4) “Department” means the West Virginia Department of Health and Human Resources.

16           (5) “Electronic Benefit Transfer” or “EBT” means any electronic system which allows the  
17 department to issue and track benefits via a magnetically encoded payment card.

18           (6) “Household” means the same as that term is defined in 7 CFR §273.1(a) and (b).

19           (7) “Public assistance” means government benefits provided to qualifying individuals on  
20 the basis of need to provide basic necessities to individuals and their families. These shall  
21 include, but are not limited to, the following:

22           (A) Supplemental Nutrition Assistance Program or SNAP;

23           (B) Medicaid; and

24           (C) Temporary Assistance to Needy Families or TANF.

25 (8) "Secretary" means the Secretary of the West Virginia Department of Health and Human

26 Resources.

27 (9) "Work" or "working" means:

28 (A) Work in exchange for money;

29 (B) Work in exchange for goods or services ("in kind" work);

30 (C) Unpaid work, verified under standards established by the department in rule; or

31 (D) Any combination, thereof.

PART TWO. ELIGIBILITY FOR SUPPLEMENTAL NUTRITION ASSISTANCE

PROGRAM.

**§9-8-2. Work requirements.**

1 (a) Effective July 1, 2017, the department shall discontinue and shall not seek, apply for,  
2 accept or renew any federal waiver granted pursuant to 7 U.S.C. §2015(o) which exempts able  
3 bodied adults with no children from work requirements for receipt of supplement nutrition  
4 assistance program benefits.

5 (b) Upon the effective date of this section, all applicants for supplemental nutrition  
6 assistance benefits in this state shall:

7 (1) Be required to work at least twenty hours per week, averaged monthly, or eighty hours  
8 a month; or

9 (2) Participate in, and comply with, the requirements of a work program of twenty hours  
10 per week, as determined by the department in rule; or

11 (3) Any combination of working and/or participating in a work program for a total of twenty  
12 hours per week, as determined by the department in rule; or

13 (4) Participate in, and comply with, a workfare program as set out in 7 CFR 273.24(a)(3).

14 (c) As determined by the department, if an individual would have worked an average of  
15 twenty hours per week but missed some work for good cause, the individual shall be considered

16 to have met the work requirement if the absence from work is temporary and the individual retains  
17 his or her job. Good cause shall include circumstances beyond the individual's control, such as,  
18 but not limited to, illness, illness of another household member requiring the presence of the  
19 member, a household emergency, or the unavailability of transportation.

20 (d) If the department determines that a waiver, or an amendment to a waiver, is necessary  
21 to implement a policy that complies with 7 CFR 273.24, they shall request the waiver or the  
22 amendment to the waiver from the United States Department of Agriculture.

23 (e) The department shall propose rules for legislative approval in accordance with the  
24 provisions of article three, chapter twenty-nine a of this code on the suspension of benefits for  
25 applicants who fall to comply with the work requirements of this section.

**§9-8-3. Asset test.**

1 (a) For the purposes of determining eligibility for receipt of SNAP benefits the department  
2 shall conduct an asset test on all members of the applicant's household. The allowable financial  
3 resources for eligibility for SNAP shall be those specified in 7 USC §2014(g)(1).

4 (b) Prior to determining eligibility for SNAP benefits and at least semi-annually thereafter,  
5 the department shall access information for every member of the applicant's household from, at  
6 a minimum, the following federal, state and miscellaneous sources.

7 (1) Federal Sources:

8 (A) The Internal Revenue Service for earned and unearned income information;

9 (B) The United States Social Security Administration for:

10 (i) Earned income information;

11 (ii) Death register information;

12 (iii) Prisoner information or incarceration status;

13 (iv) Beneficiary records and earnings information maintained in the Beneficiary and  
14 Earnings Data Exchange (BENDEX) database;

15 (v) Earnings and pension information maintained in the Beneficiary Earnings Exchange

16 Record System (BEERS) database; and

17 (vi) Supplemental Security Income information maintained in the SSI State Data Exchange  
18 (SDX) database; and

19 (C) The United States Department of Health and Human Services for:

20 (i) Income and employment information maintained in its National Directory of New Hires  
21 (NDNH) database;

22 (ii) Federal data sources maintained by the Office of Child Support Enforcement; and

23 (iii) Veterans' benefits information in coordination with the Department and the West  
24 Virginia Department of Veterans' Assistance, in the federal Public Assistance Reporting  
25 Information System (PARIS) database.

26 (2) States Sources:

27 (A) Department of Health and Human Resources databases, including but not limited to:

28 (i) Bureau for Child Support Enforcement for income and employment information;

29 (ii) Bureau for Children and Families for child care services information; and

30 (iii) Enrollment status in other public assistance programs;

31 (B) West Virginia Division of Labor for:

32 (i) Employment information;

33 (ii) Employer weekly, monthly, and/or quarterly reports of income and unemployment  
34 insurance payments; and

35 (iii) Utility payments information maintained by the State under the Low Income Home  
36 Energy Assistance Program;

37 (C) West Virginia Low Income Assistance Program for emergency utility payment  
38 information; and

39 (D) West Virginia Consolidated Public Retirement Board for earnings and pension  
40 information.

41 (3) Miscellaneous Sources:

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

44 (ii) Any databases maintained by the West Virginia Lottery Commission.

45 (c) Prior to determining eligibility and at least semi-annually thereafter, the department  
46 shall access information for every member of the applicant's household from the following public  
47 records:

48 (1) A nationwide public records data source of physical asset ownership. This may  
49 include, but is not limited to, real property, automobiles, watercraft, aircraft, and luxury vehicles,  
50 or any other vehicle owned by the applicant and recipient of assistance; and

51 (2) National and local financial institutions in order to locate undisclosed depository  
52 accounts or verify account balances of disclosed accounts.

53 (d) If every member of the household receives Supplemental Security Income the  
54 provisions of this article do not apply.

**§9-8-4. Miscellaneous eligibility provisions.**

1 (a) SNAP benefits may not be granted to a household if any member of the household has  
2 been found guilty of fraudulent activity directly related to any public assistance program.

3 (b) Any applicant for SNAP benefits who is greater than six months in arrears in a child  
4 support obligation entered pursuant to the provisions of article eleven, chapter forty-eight of this  
5 code shall be required to cooperate with the West Virginia Bureau for Child Support Enforcement  
6 as a condition of eligibility as set forth in 7 CFR §273.11(o) and (p).

7 (c) If the department determines that a waiver is necessary to implement the provisions of  
8 this section they shall request such a waiver from the United States Department of Health and  
9 Human Services, or the United States Department of Agriculture.

**PART THREE. FRAUD PREVENTION.**

**§9-8-5. Income and identity verification.**

1 (a) By December 31, 2017, the department shall redesign an existing system or establish

2 a new computerized income, asset, and identity eligibility verification system or contract with a  
3 third-party vendor to verify eligibility, eliminate the duplication of assistance, and deter waste,  
4 fraud and abuse in each public assistance program which it administers.

5 (b) The department may contract with a third-party vendor to develop a system to provide  
6 a service or verify income, assets and identity eligibility of applicants to prevent fraud,  
7 misrepresentation and inadequate documentation when determining eligibility for public  
8 assistance. This system or service shall be accessed prior to determining eligibility, periodically  
9 between eligibility redeterminations, at least semi-annually, and during eligibility redeterminations  
10 and reviews. The department may contract with a vendor to provide information to facilitate  
11 reviews of recipient eligibility conducted by the department.

12 (c) Any contract entered into as provided in this article shall provide at a minimum:

13 (1) Establishment of the annual savings from implementation of the verification system  
14 and provide that the savings shall exceed the total yearly cost to the state for implementing the  
15 verification system otherwise, in the department's discretion, the contract for the verification  
16 system, will not be renewed;

17 (2) A payment structure based on a per-applicant rate and may include a performance  
18 bonus for achieving above a predetermined rate of success of identifying waste, fraud and abuse;  
19 and

20 (3) A noncompete clause that precludes the primary vendor from bidding futures contracts  
21 in this state to operate any system of enrollment services for a reasonable amount of time, as  
22 determined by the department through the bidding process.

23 (d) Nothing in this article precludes the department from continuing to conduct additional  
24 eligibility verification processes currently in practice.

**§9-8-6. Eligibility verification.**

1 (a) All applications for benefits must be processed through a system as set forth in this  
2 article. Complete applications shall be processed within ten days of receipt, or the minimum period



3 required by federal law. Prior to determining eligibility, and at least semi-annually thereafter, the  
4 department shall access information for every applicant from the following federal, state and other  
5 sources:

6 (1) Federal Sources:

7 (A) The Internal Revenue Service for earned and unearned income information;

8 (B) The United States Social Security Administration for:

9 (i) Earned income information;

10 (ii) Death register information;

11 (iii) Prisoner information;

12 (iv) Beneficiary records and earnings information maintained in the Beneficiary and  
13 Earnings Data Exchange (BENDEX) database;

14 (v) Earnings and pension information maintained in the Beneficiary Earnings Exchange  
15 Record System (BEERS) database; and

16 (vi) Supplemental Security Income information maintained in the SSI State Data Exchange  
17 (SDX) database;

18 (C) The United States Department of Health and Human Services for:

19 (i) Income and employment information maintained in its National Directory of New Hires  
20 (NDNH) database;

21 (ii) Federal data sources maintained by the Office of Child Support Enforcement; and

22 (iii) Veterans' benefits information in coordination with the department and The West  
23 Virginia Department of Veterans' Assistance, in the federal Public Assistance Reporting  
24 Information System (PARIS) database;

25 (D) United States Citizenship and Immigration Services for status information;

26 (E) United States Department of Housing and Urban Development Public Housing and  
27 Section 8 Housing Assistance for payment information; and

28 (F) United States Federal Bureau of Investigation for national fleeing felon information.

29 (2) States Sources:

30 (A) Department of Health and Human Resources databases, including but not limited to:

31 (i) Bureau for Child Support Enforcement for income and employment information;

32 (ii) Bureau for Children and Families for child care services information;

33 (B) West Virginia Division of Labor for:

34 (i) Employment information;

35 (ii) Employer weekly, monthly, and/or quarterly reports of income and unemployment  
36 insurance payments; and

37 (iii) Utility payments information maintained by the state under the Low Income Home  
38 Energy Assistance Program;

39 (C) West Virginia Low Income Assistance Program for emergency utility payment  
40 information; and

41 (D) West Virginia Consolidated Public Retirement Board for earnings and pension  
42 information.

43 (3) Other Sources:

44 (i) Any existing real-time database of persons currently receiving benefits in other states,  
45 such as the National Accuracy Clearinghouse;

46 (ii) An available database of persons who currently hold a license, permit, or certificate  
47 from any state agency, the cost of which exceeds \$500;

48 (iii) Wage reporting and similar information maintained by states contiguous to West  
49 Virginia; and

50 (iv) A database which is substantially similar to, or a successor of, a database established  
51 in this article.

52 (G) Prior to determining eligibility and at least semi-annually thereafter, the department  
53 shall access information for every applicant from, at a minimum, the following public records:

54 (1) A nationwide public records data source of physical asset ownership. This may include,

55 but is not limited to, real property, automobiles, watercraft, aircraft, and luxury vehicles, or any  
56 other vehicle owned by the applicant and recipient of assistance;

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

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

60 (4) A comprehensive public records database from which the department can identify  
61 potential identity fraud or identity theft that can closely associate name, social security number,  
62 date of birth, phone and address information;

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

65 (6) Outstanding default or arrest warrant information maintained by the Criminal History  
66 Systems Board, the Criminal Justice Information System, and the Warrant Management System;

**§9-8-7. Identity authentication.**

1 Prior to awarding public assistance, applicants for benefits must complete a computerized  
2 identity authentication process to confirm the identity of the applicant. This shall be done with a  
3 knowledge-based questionnaire consisting of financial and/or personal questions. The  
4 questionnaire must provide support for persons without a bank account or those who have poor  
5 access to financial and banking services or who do not have an established credit history. The  
6 questionnaire may be submitted online, in-person, or via telephone.

**§9-8-8. Case Review**

1 (a) If the information obtained from the review provided in this article does not result in the  
2 department finding a discrepancy or change in an applicant's or recipient's circumstances  
3 affecting eligibility, the department shall take no further action.

4 (b) If the review results in a discrepancy the department shall promptly redetermine  
5 eligibility.

6 (c) Public assistance shall not be granted to a household if any member of the household

7 has been found guilty of fraudulent activity directly related to any public assistance program.

8 (d) Any applicant for public assistance benefits who is greater than six months in arrears  
9 in a child support obligation entered pursuant to the provisions of article eleven, chapter forty-  
10 eight of this code is not eligible for public assistance benefits until such time as he or she enters  
11 into a payment arrangement with the West Virginia Bureau for Child Support Enforcement, or is  
12 found by said bureau to have no ability to pay their child support obligation.

13 (e) A redetermination of eligibility shall occur in every case at least semi-annually.

**§9-8-9. Notice and right to be heard.**

1 (a) An applicant shall be given written notice and the opportunity to explain any issues  
2 with the application or redetermination as set forth in section eight of this article. Self-declarations  
3 by applicants or recipients shall not be accepted as verification of categorical and financial  
4 eligibility during eligibility evaluations, reviews, and redeterminations.

5 (b) The notice given to the applicant or recipient is required to describe the circumstances  
6 of the issue, the manner in which the applicant or recipient may respond, and the consequences  
7 of failing to take action. The applicant or recipient shall have ten days to respond. If the applicant  
8 does not respond, the department shall take appropriate action. The department may request  
9 additional information as it finds necessary to reach a decision.

10 (c) If an applicant or recipient responds, he or she shall respond in writing and may:

11 (1) Disagree with the findings of the department. The department may reinvestigate the  
12 matter if the applicant or recipient disagrees. If the department finds that there has been an error,  
13 the department shall take immediate action to correct it. If the department determines that there  
14 is no error, the department shall determine the effect on the applicant's or recipient's case and  
15 take appropriate action. Written notice of the department's action shall be given to the applicant  
16 or recipient.

17 (2) Agree with the findings of the department. The department shall determine the effect  
18 on the applicant's or recipient's case and take appropriate action. Written notice of the

19 department's action shall be given to the applicant or recipient.

20 (d) If the applicant fails to respond to the notice, the department shall deny or discontinue  
21 assistance for failure to cooperate. The applicant shall be given notice of intent to deny or  
22 discontinue assistance. Eligibility for assistance may not be established or reestablished until the  
23 issue has been resolved.

**§9-8-10. Referrals for fraud, misrepresentation, or inadequate documentation.**

1 (a) After the case review as set forth in section eight of this article, the department may  
2 refer cases of suspected fraud to the office of Inspector General within the department. That  
3 office shall take appropriate action including civil penalties or referral to an appropriate  
4 prosecuting attorney for criminal prosecution.

5 (b) In cases of substantiated fraud, upon conviction, the state shall review all appropriate  
6 legal options. These may include, but are not limited to, removal from other public assistance  
7 programs and garnishment of wages or state income tax refunds until the department recovers  
8 an equal amount of benefits fraudulently claimed.

9 (c) The department may refer suspected cases of fraud, misrepresentation, or inadequate  
10 documentation to appropriate agencies, divisions, or departments for review of eligibility issues in  
11 other public assistance programs. This should also include cases in which an individual is  
12 determined to be no longer eligible for the original program.

**§9-8-11. Reporting to the Governor and Legislature.**

1 The department shall prepare an annual report by December 31 each year to the Governor  
2 and Legislative Oversight Commission on Health and Human Resources Accountability. The  
3 report shall contain information on the effectiveness and general findings of the eligibility  
4 verification system, including the number of cases reviewed, the number of case closures, the  
5 number of referrals for criminal prosecution, recovery of improper payment, collection of civil  
6 penalties, the outcomes of cases referred to the office of Inspector General, and any savings that  
7 have resulted from the system.

**§9-8-12. Prohibitions on use of electronic benefit transfer cards.**

1           (a) To ensure that public assistance program funds are used for their intended purposes,  
2   funds available on electronic benefit transfer cards may not be used to purchase alcohol, liquor  
3   or imitation liquor, cigarettes, tobacco products, bail, gambling activities, lottery tickets, tattoos,  
4   travel services provided by a travel agent, money transmission to locations abroad, sexually  
5   oriented adult materials, concert tickets, professional or collegiate sporting event tickets, or tickets  
6   for other entertainment events intended for the general public.

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

15           (c) Upon enrollment, the department shall provide all applicants with an itemized list of  
16   prohibited purchases, including those specified in this section, and make such list available on  
17   the department's website.

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

**§9-8-13. Tracking out-of-state spending.**

1           (a) The department shall post on its websites and provide to the Joint Committee on  
2   Government and Finance, a report of Supplemental Nutrition Assistance Program (SNAP) and  
3   Temporary Assistance for Needy Families (TANF) benefit spending on or before December 31,

4 of each year.

5 (b) The report required by this section shall include:

6 (1) The dollar amount and number of transactions of Supplemental Nutrition Assistance  
7 Program benefits that are accessed or spent out-of-state, by state;

8 (2) The dollar amount and number of transactions of Temporary Assistance for Needy  
9 Families benefits that are accessed or spent out-of-state, by state;

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

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

16 (c) The report required pursuant to this section shall not identify individual recipients.

#### PART FOUR. RULEMAKING.

##### **§9-8-14. Rulemaking.**

1 The secretary may promulgate rules for legislative approval in accordance with the  
2 provisions of article three, chapter twenty-nine-a of this code, which he or she finds necessary to  
3 effectuate the provisions of this article.

NOTE: The purpose of this bill is to provide for eligibility and fraud requirements for public assistance; defining terms; requiring the Department of Health and Human Resources to implement work requirements for applicants for the Supplemental Nutrition Assistance Program (SNAP); requiring discontinuance of a federal waiver; setting forth what meets work requirements; setting out exceptions to work requirements; providing for a good cause exception; allowing for a federal waiver to meet the requirements of this section; providing for rulemaking for suspension of benefits for noncompliance; providing for an asset test for SNAP benefits; requiring accessing information of various federal, state and miscellaneous sources; prohibiting payment of SNAP benefits in specified instances; requiring cooperation with the Bureau of Child Support Enforcement; requiring a design or establishment of a computerized income, asset and identity verification system for Temporary Assistance to Needy Families (TANF); allowing for contracting with a third-

party vendor; setting out required contract terms; requiring accessing information of various federal, state and miscellaneous sources for TANF; requiring identity authentication as a condition to receiving public assistance; requiring a semi-annual case review of all public assistance cases; setting forth notice requirements and the right to a hearing; requiring referrals for fraud, misrepresentation and inadequate documentation; requiring report to the Governor and Legislature; setting forth prohibitions on the use of an electronic benefit transfer card; tracking out of state spending of SNAP and TANF benefits and providing for rulemaking.

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