

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 76

BY SENATORS TARR AND ROBERTS

[Introduced January 8, 2020; referred
to the Committee on the Workforce; and then 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 §62-15C-1, §62-15C-2, §62-15C-3, §62-15C-4, and §62-15C-5, all relating to
 3 limiting the liability of employers in cases where convictions for certain crimes are
 4 expunged; requiring creation of a database record showing offenses were expunged;
 5 requiring courts to cross-reference database for expungements; providing that an
 6 employer is not liable to furnish health insurance or health care costs to persons whose
 7 records are expunged for drug addiction related offenses or drug addiction related
 8 diseases; and providing exceptions.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 15C. LIMITED LIABILITY OF EMPLOYERS OF PERSONS WHOSE
 CRIMINAL RECORDS ARE EXPUNDED FOR DRUG ADDICTION RELATED
 OFFENSES.**

**§62-15C-1. Legislative findings; employer not liable for drug addiction related offense of
 employee.**

1 (a) The Legislature finds that potential employers may not have, or be entitled to,
 2 knowledge or information that a person applying for employment or hired for employment has had
 3 his or her criminal record for a drug addiction related offense or disease expunged. The
 4 Legislature also finds that reliable studies indicate that there is high rate of recidivism for persons
 5 who are addicted to drugs. In those cases, an employer should not be liable for unlawful or
 6 negligent actions of an employee who continues the use of addictive drugs or other substances
 7 after employment, nor should an employer be responsible for health care costs associated with
 8 addiction or addiction related diseases if an employee reverts to the use of such drugs or
 9 substances during the course of his or her employment.

10 (b) An employer, who knowingly or unknowingly participates in any return to work
 11 initiatives for recovering addicts under §62-15-1 et seq. or §62-15A-1 et seq. of this code or any

12 other such program, is not liable for any civil or criminal offense committed by an employee whose
13 drug addiction related offense or disease that is expunged under any provision of this code, or
14 otherwise dealt with under §62-15-1 et seq. or §62-15A-1 et seq. of this code, while in the employ
15 of the employer.

§62-15C-2. Maintenance of data base for expungement of drug addiction offenses.

1 Notwithstanding any other provision of this code to the contrary, the Secretary of the
2 Department of Military Affairs and Public Safety Program shall establish a database program that
3 shall be maintained for drug addiction related offenses or diseases that are expunged under any
4 provision of this code, or otherwise dealt with under §62-15-1 et seq., or §62-15A-1 et seq. of this
5 code. The database may apply only to any return to work initiative for recovering addicts and the
6 nature of the specific offense may not be listed.

§62-15C-3. Courts required to cross reference database for certain expunged criminal offenses.

1 In the course of any civil or criminal action related to an employee who is employed under
2 a return to work initiative for recovering addicts, an employer may ask a court to cross reference
3 an individual against the database required by this article in order to determine if an employee
4 charged for a civil or criminal offense is in the database. The court shall make a cross-reference
5 search of the database referred to in §62-15C-2 of this code and the action of an employee
6 associated with the civil action against the employer. An employer is not responsible for the cost
7 of the cross-reference search.

§62-15C-4. Employer not liable for health insurance coverage.

1 If an employee, who has had his or her criminal record for a drug addiction related offense
2 or disease expunged commits an unlawful or negligent act during his or her employment, and
3 whose employment is terminated as a result of the unlawful and negligent act, the employer is
4 not required to provide health insurance coverage to the employee, in any situation where health
5 care costs to the employer arise for the treatment of addiction or addiction related diseases, as a

6 result of continued use of addicting drugs or substances by the employee.

§62-15C-5. Waiver to provide health insurance.

1 An employer may not be required to sign a waiver agreeing to provide health insurance
2 coverage for health care costs associated with addiction or addiction related diseases of an
3 employee who has had his or her criminal record for a drug addiction related offense or disease
4 expunged: *Provided*, That an employer may voluntarily sign a waiver. If a waiver is signed, any
5 coverage on a health care or health insurance plan may not be denied the individual by the
6 employer or health insurance plan.

NOTE: The purpose of this bill is to limit the liability of employers in cases where convictions of an employee for certain crimes are expunged. The bill requires creation of a data base record showing offenses were expunged. Courts are required to cross-reference data base for expungements. The bill provides that an employer is not liable to furnish health insurance or health care costs to persons whose records are expunged for drug addiction related or drug addiction related diseases.

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