WEST VIRGINIA LEGISLATURE
2016 REGULAR SESSION

Enrolled
Committee Substitute
for

Senate Bill 6

BY SENATORS FERNS, CARMICHAEL, GAUNCH, TAKUBO,
TRUMP, PREZIOSO, STOLLINGS, PLYMALE, BLAIR, KARNES
AND SYPOLT, original sponsors

[Passed March 10, 2016; in effect 90 days from passage]
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[Passed March 10, 2016; in effect 90 days from passage]
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-3-6, relating to drug screening for applicants of benefits from the Temporary Assistance for Needy Families Program; requiring drug testing of applicants for whom there is reasonable suspicion of substance abuse; creating pilot program; setting forth an effective date; defining terms; providing basis for reasonable suspicion of drug use; requiring participation in substance abuse treatment, counseling and job skills program with adverse drug test; precluding assistance for refusal to take drug test; establishing administrative review of decisions to deny benefits; providing mechanism for dependent children to receive benefits if parent is deemed ineligible; setting forth prohibition from benefits for adverse drug test; requiring investigation by Child Protective Services upon adverse drug test; setting forth procedure for reapplication for benefits; authorizing rulemaking by Department of Health and Human Resources; requiring results of drug screen or drug test remain confidential; providing for criminal penalties; requiring annual report to the Legislature; setting out elements of annual report; requiring federal approval of program; requiring secretary to modify program to meet any federal objections; and allowing for exceptions.

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. Pilot program for drug screening of applicants for cash assistance.

(a) As used in this section:

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

(2) "Board of Review" means the board established in subdivision (2), section six, article two, chapter nine of this code.
(3) "Caseworker" means a person employed by the department with responsibility for making a reasonable suspicion determination during the application process for Temporary Assistance for Needy Families.

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

(5) "Department" means the Department of Health and Human Resources.

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

(7) "Drug test" or "drug testing" means a drug test which tests urine for Amphetamines (amphetamine and methamphetamine) Cocaine, Marijuana, Opiates (codeine and morphine), Phencyclidine, Barbiturates, Benzodiazepines, Methadone, Propoxyphene and Expanded Opiates (oxycodone, hydromorphone, hydrocodone, oxymorphone).

(8) "Secretary" means the secretary of the department or his or her designee.

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

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

(c) Reasonable suspicion exists if:

(1) A case worker determines, based upon the result of the drug screen, that the applicant demonstrates qualities indicative of substance abuse based upon the indicators of the drug screen; or
(2) An applicant has been convicted of a drug-related offense within the three years immediately prior to an application for Temporary Assistance for Needy Families Program and whose conviction becomes known as a result of a drug screen as set forth in this section.

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

(e) Upon a determination by the case worker of reasonable suspicion as set forth in this section an applicant shall be required to complete a drug test. The cost of administering the drug test and initial substance abuse testing program is the responsibility of the Department of Health and Human Resources. Any applicant whose drug test results are positive may request that the drug test specimen be sent to an alternative drug-testing facility for additional drug testing. Any applicant who requests an additional drug test at an alternative drug-testing facility shall be required to pay the cost of the alternative drug test.

(f) Any applicant who has a positive drug test shall complete a substance abuse treatment and counseling program and a job skills program approved by the secretary. An applicant may continue to receive benefits from the Temporary Assistance for Needy Families program while participating in the substance abuse treatment and counseling program or job skills program. Upon completion of both a substance abuse treatment and counseling program and a job skills program, the applicant is subject to periodic drug screening and testing as determined by the secretary in rule. Subject to applicable federal laws, any applicant for Temporary Assistance for Needy Families program who fails to complete, or refuses to participate in, the substance abuse treatment and counseling program or job skills program as required under this subsection is ineligible to receive Temporary Assistance for Needy Families until he or she is successfully enrolled in substance abuse treatment and counseling and job skills programs. Upon a second positive drug test, an applicant shall be ordered to complete a second substance abuse treatment and counseling program and job skills program. He or she shall be suspended from the Temporary
Enr. CS for SB 6

Assistance for Needy Families program for a period of twelve months, or until he or she completes both a substance abuse treatment and counseling program and a job skills program. Upon a third positive drug test an applicant shall be permanently terminated from the Temporary Assistance for Needy Families Program subject to applicable federal law.

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

(h) The secretary shall order an investigation and home visit from Child Protective Services on any applicant whose benefits are suspended and who has not designated a protective payee or whose benefits are terminated due to failure to pass a drug test. This investigation and home visit may include a face-to-face interview with the child, if appropriate; the development of a protection plan; and, if necessary for the health and well-being of the child, may also involve law enforcement. This investigation and home visit shall be followed by a report detailing recommended action which Child Protective Services shall undertake. Child Protective Services is responsible for providing, directing or coordinating the appropriate and timely delivery of services to any child who is the subject of any investigation and home visit conducted pursuant to this section. In cases where Child Protective Services determines that the best interests of the child requires court action, they shall initiate the appropriate legal proceeding.

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

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

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

(3) The parent may choose to designate another person as a protective payee to receive benefits for the minor child. The designated person shall be an immediate family member, or if an
(4) The secretary shall screen and approve the designated person.

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

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

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

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

(m) The secretary shall ensure the confidentiality of all drug screen and drug test results administered as part of this program. Drug screen and test results shall be used only for the
purpose of determining eligibility for the Temporary Assistance for Needy Families program. At
no time may drug screen or test results be released to any public or private person or entity or
any law-enforcement agency, except as otherwise authorized by this section.

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

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

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

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

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

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

(4) The total cost to operate the program.

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

(r) For the purposes of the pilot program contained in this section, pursuant to the authority
and option granted by 21 U. S. C. §862a(d)(1)(A) to the states, West Virginia hereby exempts all
persons domiciled within the state from the application of 21 U. S. C. §862a(a).
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, Senate Committee

Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within .... is approved ........ this the .... 23rd

Day of .... March ................., 2016.

Governor