

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 186**

4 (By Senators Foster, Kessler (Acting President), Chafin,  
5 Hall, Jenkins, Laird, Minard, Palumbo, Snyder, Williams, Edgell,  
6 Wells, Unger, Browning, Plymale, Miller, Nohe and Klempa)

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8 [Originating in the Committee on the Judiciary;  
9 reported February 3, 2011.]  
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12 A BILL to amend the Code of West Virginia, 1931, as amended, by  
13 adding thereto a new article, designated §62-1G-1 and  
14 §62-1G-2, all relating to issuing a subpoena in aid of  
15 criminal investigations involving certain crimes against  
16 minors; providing legislative declaration of necessity;  
17 providing definitions; authorizing issuance of a subpoena upon  
18 reasonable suspicion that an electronic communications system  
19 or service or remote computing service has been used in the  
20 commission of a criminal offense of a sexual nature against a  
21 minor upon written application therefor by the West Virginia  
22 State Police Crimes Against Children Unit; providing  
23 definitions; requiring that certain information be provided in  
24 the subpoena; providing what information is to be disclosed in  
25 response to a subpoena; authorizing a fee for information  
26 provided in response to subpoena; providing for nondisclosure

1 of subpoena or response to subpoena to account holder; and  
2 limiting liability of electronic communication systems or  
3 services, remote computing service providers, electronic  
4 service providers and telecommunications carriers.

5 *Be it enacted by the Legislature of West Virginia:*

6 That the Code of West Virginia, 1931, as amended, be amended  
7 by adding thereto a new article, designated §62-1G-1 and §62-1G-2,  
8 all to read as follows:

9 **ARTICLE 1G. SUBPOENA POWERS FOR AID OF CRIMINAL INVESTIGATION**  
10 **RELATING TO CERTAIN OFFENSES AGAINST MINORS.**

11 **§62-1G-1. Declaration of necessity.**

12 It is declared, as a matter of legislative determination, that  
13 it is necessary to grant subpoena powers in aid of criminal  
14 investigations of certain crimes against minors involving  
15 electronic communications systems or services or remote computing  
16 services.

17 **§62-1G-2. Subpoenas for criminal investigations relating to**  
18 **certain offenses against minors for records**  
19 **concerning an electronic communications system or**  
20 **service or remote computing service; content; fee**  
21 **for providing information; and limiting liability.**

22 (a) As used in this section:

23 (1) (A) "Electronic communication" means any transfer of signs,  
24 signals, writing, images, sounds, data or intelligence of any  
25 nature transmitted, in whole or in part, by a wire, radio,

1 electromagnetic, photoelectronic or photooptical system.

2 (B) "Electronic communication" does not include:

3 (i) Any wire or oral communication;

4 (ii) Any communication made through a tone-only paging device;

5 (iii) Any communication from a tracking device; or

6 (iv) Electronic funds transfer information stored by a  
7 financial institution in a communications system used for the  
8 electronic storage and transfer of funds.

9 (2) "Electronic communications service" means any service  
10 which provides for users the ability to send or receive wire or  
11 electronic communications.

12 (3) "Electronic communications system" means any wire, radio,  
13 electromagnetic, photooptical or photoelectronic facilities for the  
14 transmission of wire or electronic communications, and any computer  
15 facilities or related electronic equipment for the electronic  
16 storage of the communication.

17 (4) (A) "Electronic service provider" means a person or  
18 entity engaged in the business of providing computer communications  
19 through which a consumer may obtain access to the internet.

20 (B) "Electronic service provider" does not include a common  
21 carrier if it provides only telecommunications service.

22 (5) "Sexual offense against a minor" means:

23 (A) A violation or attempted violation of section five,  
24 article eight-d, chapter sixty-one of this code;

25 (B) A sexual offense or attempted sexual offense committed

1 against a minor in violation of article eight-b, chapter sixty-one  
2 of this code;

3 (C) The distribution and display or attempted distribution  
4 and display of obscene materials to a minor in violation of section  
5 two, article eight-a, chapter sixty-one of this code;

6 (D) The use or attempted use of obscene matter with the  
7 intent to seduce a minor in violation of section four, article  
8 eight-a, chapter sixty-one of this code;

9 (E) The employment or use or the attempted employment or use  
10 of a minor to produce obscene materials in violation of section  
11 five, article eight-a, chapter sixty-one of this code;

12 (F) The solicitation of a minor by use of a computer in  
13 violation of section fourteen-b, article three-c, chapter sixty-one  
14 of this code; or

15 (G) The use of a minor in filming sexually explicit conduct  
16 in violation of sections two and three, article eight-c, chapter  
17 sixty-one of this code.

18 (6) "Remote computing service" means the provision to the  
19 public of computer storage or processing services by means of an  
20 electronic communications system.

21 (b) When a law-enforcement agency is investigating a sexual  
22 offense against a minor, an offense of stalking under section nine-  
23 a, article two, chapter sixty-one of this code when the victim is  
24 a minor or an offense of child kidnapping under section fourteen,  
25 article two, chapter sixty-one of this code, and has reasonable

1 suspicion that an electronic communications system or service or  
2 remote computing service has been used in the commission of a sexual  
3 offense against a minor as defined in this section, an offense of  
4 stalking when the victim is a minor or an offense of child  
5 kidnapping, a magistrate, a family court judge or a circuit court  
6 judge may issue a subpoena upon written application by a member of  
7 the West Virginia State Police Crimes Against Children Unit,  
8 consistent with 18 U.S.C. §2703 and 18 U.S.C. §2702, to the  
9 electronic communications system or service or remote computing  
10 service provider that owns or controls the internet protocol  
11 address, websites, electronic mail address or service to a specific  
12 telephone number, requiring the production of the following  
13 information, if available, upon providing in the subpoena the  
14 internet protocol address, electronic mail address, telephone number  
15 or other identifier, and the dates and times the address, telephone  
16 number or other identifier suspected of being used in the commission  
17 of the offense:

- 18 (1) Names;
- 19 (2) Addresses;
- 20 (3) Local and long distance telephone connections;
- 21 (4) Records of session times and durations;
- 22 (5) Length of service, including the start date and types of  
23 service utilized;
- 24 (6) Telephone or other instrument subscriber numbers or other  
25 subscriber identifiers, including any temporarily assigned network  
26 address; and

1 (7) Means and sources of payment for the service, including any  
2 credit card or bank account numbers.

3 (c) A subpoena issued under this section shall state that the  
4 electronic communications system or service or remote computing  
5 service provider shall produce any records under subdivisions (1)  
6 through (7) of subsection (b) of this section, that are reasonably  
7 necessary to the investigation of the suspected criminal activity  
8 or offense as described in the subpoena.

9 (d) (1) An electronic communications system or service or  
10 remote computing service provider that provides information in  
11 response to a subpoena issued under this section may charge a fee,  
12 not to exceed the actual cost for providing the information.

13 (2) The law-enforcement agency conducting the investigation  
14 shall pay the fee.

15 (e) The electronic communications system or service or remote  
16 computing service provider served with or responding to the subpoena  
17 shall not disclose the existence of the subpoena or its response to  
18 the subpoena to the account holder identified in the subpoena.

19 (f) If the electronic communications system or service or  
20 remote computing service provider served with the subpoena does not  
21 own or control the internet protocol address, websites or electronic  
22 mail address or provide service for the telephone number that is a  
23 subject of the subpoena, the provider shall:

24 (1) Notify the investigating law-enforcement agency that it is  
25 not the provider of the service; and

26 (2) Provide to the investigating law-enforcement agency any

1 information the provider knows, through reasonable effort, that it  
2 has regarding how to locate the electronic service provider that  
3 does own or control the internet protocol address, websites or  
4 electronic mail address, or provides service for the telephone  
5 number.

6 (g) There shall be no cause of action against any electronic  
7 communication system or service, remote computing service provider,  
8 electronic service provider or telecommunications carrier or its  
9 officers, employees, agents or other specified persons for providing  
10 information, facilities or assistance in accordance with the terms  
11 of the subpoena issued under this section.

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(NOTE: This article is new; therefore, strike-throughs and underscoring have been omitted.)