

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 186**

5 (SENATORS FOSTER, KESSLER (ACTING PRESIDENT), CHAFIN,

6 HALL, JENKINS, LAIRD, MINARD, PALUMBO, SNYDER, WILLIAMS, EDGELL, WELLS,

7 UNGER, BROWNING, PLYMALE, MILLER, NOHE AND KLEMPA, *original sponsors*)

8 \_\_\_\_\_  
9 [Passed March 11, 2011; in effect ninety days from passage.]  
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11  
12 AN ACT 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 law enforcement;  
22 providing definitions; requiring that certain information be  
23 provided in the subpoena; providing what information is to be  
24 disclosed in response to a subpoena; authorizing a fee for  
25 information provided in response to subpoena; providing for  
26 non-disclosure of subpoena or response to subpoena to account

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

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

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

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

10 **§62-1G-1. Declaration of necessity.**

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

16 **§62-1G-2. Subpoenas for criminal investigations relating to**  
17 **certain offenses against minors for records concerning an**  
18 **electronic communications system or service or remote**  
19 **computing service; content; fee for providing information; and**  
20 **limiting liability.**

21 (a) As used in this section:

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

1 (B) "Electronic communication" does not include:  
2 (i) Any oral communication;  
3 (ii) Any communication made through a tone-only paging device;  
4 (iii) Any communication from a tracking device; or  
5 (iv) Electronic funds transfer information stored by a  
6 financial institution in a communications system used for the  
7 electronic storage and transfer of funds.

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

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

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

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

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

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

24 (B) A sexual offense or attempted sexual offense committed  
25 against a minor in violation of article eight-b, chapter sixty-one

1 of this code;

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

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

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

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

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

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

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

1 remote computing service has been used in the commission of a  
2 sexual offense against a minor as defined in this section, an  
3 offense of stalking when the victim is a minor or an offense of  
4 child kidnapping, a magistrate or a circuit court judge may issue  
5 a subpoena, upon written application on a form approved by the West  
6 Virginia Supreme Court of Appeals, to the electronic communications  
7 system or service or remote computing service provider that owns or  
8 controls the internet protocol address, websites, electronic mail  
9 address or service to a specific telephone number, requiring the  
10 production of the following information, if available, upon  
11 providing in the subpoena the internet protocol address, electronic  
12 mail address, telephone number or other identifier, and the dates  
13 and times the address, telephone number or other identifier  
14 suspected of being used in the commission of the offense:

15 (1) Names;

16 (2) Addresses;

17 (3) Local and long distance telephone connections;

18 (4) Records of session times and durations;

19 (5) Length of service, including the start date and types of  
20 service utilized;

21 (6) Telephone or other instrument subscriber numbers or other  
22 subscriber identifiers, including any temporarily assigned network  
23 address; and

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

26 (c) A subpoena issued under this section shall state that the

1 electronic communications system or service or remote computing  
2 service provider shall produce only those records listed in  
3 subdivisions (1) through (7) of subsection (b) of this section,  
4 that are reasonably necessary to the investigation of the suspected  
5 criminal activity or offense as described in the subpoena:  
6 Provided, that the law-enforcement agency may not examine the  
7 contents of electronic communications without a warrant.

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

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

14       (e) The electronic communications system or service or remote  
15 computing service provider served with or responding to the  
16 subpoena shall not disclose the existence of the subpoena or its  
17 response to the subpoena to the account holder identified in the  
18 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  
22 electronic mail address or provide service for the telephone number  
23 that is a 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  
10 providing information, facilities or assistance in accordance with  
11 the terms of the subpoena issued under this section.

12 (h) Applications for subpoenas authorized by this section may  
13 be transmitted to the appropriate court by any means permitted by  
14 rules promulgated by the West Virginia Supreme Court of Appeals.

15 (i) The West Virginia Supreme Court of Appeals shall prescribe  
16 a form to be used by law-enforcement agencies applying for a  
17 subpoena authorized by this section.