

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 186

(SENATORS FOSTER, KESSLER (ACTING PRESIDENT),
CHAFIN, HALL, JENKINS, LAIRD, MINARD, PALUMBO,
SNYDER, WILLIAMS, EDGELL, WELLS, UNGER, BROWNING,
PLYMALE, MILLER, NOHE AND KLEMPA, *original sponsors*)

[Passed March 11, 2011; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §62-1G-1 and §62-1G-2, all relating to issuing a subpoena in aid of criminal investigations involving certain crimes against minors; providing legislative declaration of necessity; providing definitions; authorizing issuance of a subpoena upon reasonable suspicion that an electronic communications system or service or remote computing service has been used in the commission of a criminal offense of a sexual nature against a minor upon written application therefor by law enforcement; providing definitions; requiring that certain information be provided in the subpoena; providing what information is to be disclosed in response to a subpoena; authorizing a fee for information provided in response to subpoena; providing for non-disclosure of subpoena or response to subpoena to account holder; and limiting liability of electronic communication systems or services, remote computing service providers, electronic service providers and telecommunications carriers.

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 article, designated §62-1G-1 and §62-1G-2, all to read as follows:

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

§62-1G-1. Declaration of necessity.

1 It is declared, as a matter of legislative determination, that
2 it is necessary to grant subpoena powers in aid of criminal
3 investigations of certain crimes against minors involving
4 electronic communications systems or services or remote
5 computing services.

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

1 (a) As used in this section:

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

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

7 (i) Any oral communication;

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

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

11 (iv) Electronic funds transfer information stored by a
12 financial institution in a communications system used for the
13 electronic storage and transfer of funds.

14 (2) “Electronic communications service” means any service
15 which provides for users the ability to send or receive wire
16 or electronic communications.

17 (3) “Electronic communications system” means any wire,
18 radio, electromagnetic, photooptical or photoelectronic
19 facilities for the transmission of wire or electronic communi-
20 cations, and any computer facilities or related electronic
21 equipment for the electronic storage of the communication.

22 (4)(A) “Electronic service provider” means a person or
23 entity engaged in the business of providing computer
24 communications through which a consumer may obtain
25 access to the internet.

26 (B) “Electronic service provider” does not include a
27 common carrier if it provides only telecommunications
28 service.

29 (5) “Sexual offense against a minor” means:

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

32 (B) A sexual offense or attempted sexual offense committed
33 against a minor in violation of article eight-b, chapter sixty-
34 one of this code;

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

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

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

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

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

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

53 (b) When a law-enforcement agency is investigating a
54 sexual offense against a minor, an offense of stalking under
55 section nine-a, article two, chapter sixty-one of this code
56 when the victim is a minor or an offense of child kidnapping
57 under section fourteen, article two, chapter sixty-one of this
58 code, and has reasonable suspicion that an electronic
59 communications system or service or remote computing
60 service has been used in the commission of a sexual offense
61 against a minor as defined in this section, an offense of
62 stalking when the victim is a minor or an offense of child
63 kidnapping, a magistrate or a circuit court judge may issue
64 a subpoena, upon written application on a form approved by
65 the West Virginia Supreme Court of Appeals, to the elec-
66 tronic communications system or service or remote comput-
67 ing service provider that owns or controls the internet
68 protocol address, websites, electronic mail address or service
69 to a specific telephone number, requiring the production of
70 the following information, if available, upon providing in the
71 subpoena the internet protocol address, electronic mail
72 address, telephone number or other identifier, and the dates
73 and times the address, telephone number or other identifier
74 suspected of being used in the commission of the offense:

75 (1) Names;

76 (2) Addresses;

77 (3) Local and long distance telephone connections;

78 (4) Records of session times and durations;

79 (5) Length of service, including the start date and types of
80 service utilized;

81 (6) Telephone or other instrument subscriber numbers or
82 other subscriber identifiers, including any temporarily
83 assigned network address; and

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

86 (c) A subpoena issued under this section shall state that the
87 electronic communications system or service or remote
88 computing service provider shall produce only those records
89 listed in subdivisions (1) through (7) of subsection (b) of this
90 section, that are reasonably necessary to the investigation of
91 the suspected criminal activity or offense as described in the
92 subpoena: Provided, that the law-enforcement agency may
93 not examine the contents of electronic communications
94 without a warrant.

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

100 (2) The law-enforcement agency conducting the investiga-
101 tion shall pay the fee.

102 (e) The electronic communications system or service or
103 remote computing service provider served with or respond-
104 ing to the subpoena shall not disclose the existence of the
105 subpoena or its response to the subpoena to the account
106 holder identified in the subpoena.

107 (f) If the electronic communications system or service or
108 remote computing service provider served with the subpoena
109 does not own or control the internet protocol address,
110 websites or electronic mail address or provide service for the
111 telephone number that is a subject of the subpoena, the
112 provider shall:

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

115 (2) Provide to the investigating law-enforcement agency
116 any information the provider knows, through reasonable
117 effort, that it has regarding how to locate the electronic
118 service provider that does own or control the internet
119 protocol address, websites or electronic mail address, or
120 provides service for the telephone number.

121 (g) There shall be no cause of action against any electronic
122 communication system or service, remote computing service
123 provider, electronic service provider or telecommunications
124 carrier or its officers, employees, agents or other specified
125 persons for providing information, facilities or assistance in
126 accordance with the terms of the subpoena issued under this
127 section.

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

132 (j) The West Virginia Supreme Court of Appeals shall
133 prescribe a form to be used by law-enforcement agencies
134 applying for a subpoena authorized by this section.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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Acting President of the Senate

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Speaker of the House of Delegates

The within this the
Day of, 2011.

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Governor