

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 498**

5 (SENATORS FOSTER AND KLEMPA, *original sponsors*)

6 _____
7 [Passed March 10, 2012; in effect ninety days from passage.]
8 _____
9

10
11 AN ACT to amend and reenact §9-6-8 and §9-6-9 of the Code of West
12 Virginia, 1931, as amended, all relating to adult protective
13 services and reports of abuse, neglect or exploitation of
14 vulnerable adults; permitting distribution of adult protective
15 services records to certain individuals and entities;
16 permitting distribution of a summary of those records to
17 certain other individuals and entities; protecting the
18 confidentiality of the identity of the reporter; and requiring
19 a program for notifying mandatory reporters at the outset and
20 conclusion of investigations.

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

22 That §9-6-8 and §9-6-9 of the Code of West Virginia, 1931, as
23 amended, be amended and reenacted, all to read as follows:

24 **ARTICLE 6. SOCIAL SERVICES FOR ADULTS.**

1 **§9-6-8. Confidentiality of records.**

2 (a) Except as otherwise provided in this section, all records
3 of the department, state and regional long-term care ombudsmen,
4 nursing home or facility administrators, the office of health
5 facility licensure and certification and all protective services
6 agencies concerning an adult or facility resident under this
7 article are confidential and may not be released, except in
8 accordance with the provisions of section eleven of this article.

9 (b) Unless the adult concerned is receiving adult protective
10 services or unless there are pending proceedings with regard to the
11 adult, the records maintained by the adult protective services
12 agency shall be destroyed thirty years following their preparation.

13 (c) Notwithstanding the provisions of subsection (a) of this
14 section or any other provision of this code to the contrary, all
15 records concerning reports of abuse, neglect or exploitation of
16 vulnerable adults, including all records generated as a result of
17 such reports, may be made available to:

18 (1) Employees or agents of the department who need access to
19 the records for official business.

20 (2) Any law-enforcement agency investigating a report of known
21 or suspected abuse, neglect or exploitation of a vulnerable adult.

22 (3) The prosecuting attorney of the judicial circuit in which
23 the vulnerable adult resides or in which the alleged abuse, neglect
24 or exploitation occurred.

1 (4) A circuit court or the Supreme Court of Appeals
2 subpoenaing the records. The court shall, before permitting use of
3 the records in connection with any court proceeding, review the
4 records for relevancy and materiality to the issues in the
5 proceeding. The court may issue an order to limit the examination
6 and use of the records or any part of the record.

7 (5) A grand jury, by subpoena, upon its determination that
8 access to the records is necessary in the conduct of its official
9 business.

10 (6) The recognized protection and advocacy agency for the
11 disabled of the State of West Virginia.

12 (7) The victim.

13 (8) The victim's legal representative, unless he or she is the
14 subject of an investigation under this article.

15 (d) Notwithstanding the provisions of subsection (a) of this
16 section or any other provision of this code to the contrary,
17 summaries concerning substantiated investigative reports of abuse,
18 neglect or exploitation of adults may be made available to:

19 (1) Any person who the department has determined to have
20 abused, neglected or exploited the victim.

21 (2) Any appropriate official of the state or regional long-
22 term care ombudsman investigating a report of known or suspected
23 abuse, neglect or exploitation of a vulnerable adult.

24 (3) Any person engaged in bona fide research or auditing, as

1 defined by the department. However, information identifying the
2 subjects of the report may not be made available to the researcher.

3 (4) Employees or agents of an agency of another state that has
4 jurisdiction to investigate known or suspected abuse, neglect or
5 exploitation of vulnerable adults.

6 (5) A professional person when the information is necessary
7 for the diagnosis and treatment of, and service delivery to, a
8 vulnerable adult.

9 (6) A department administrative hearing officer when the
10 hearing officer determines the information is necessary for the
11 determination of an issue before the officer.

12 (e) The identity of any person reporting abuse, neglect or
13 exploitation of a vulnerable adult may not be released, without
14 that person's written consent, to any person other than employees
15 of the department responsible for protective services or the
16 appropriate prosecuting attorney or law-enforcement agency. This
17 subsection grants protection only for the person who reported the
18 abuse, neglect or exploitation and protects only the fact that the
19 person is the reporter. This subsection does not prohibit the
20 subpoena of a person reporting the abuse, neglect or exploitation
21 when deemed necessary by the prosecuting attorney or the department
22 to protect a vulnerable adult who is the subject of a report, if
23 the fact that the person made the report is not disclosed.

24 **§9-6-9. Mandatory reporting of incidences of abuse, neglect or**

1 **emergency situation.**

2 (a) If any medical, dental or mental health professional,
3 Christian Science practitioner, religious healer, social service
4 worker, law-enforcement officer, humane officer, state or regional
5 ombudsman or any employee of any nursing home or other residential
6 facility has reasonable cause to believe that an incapacitated
7 adult or facility resident is or has been neglected, abused or
8 placed in an emergency situation, or if such person observes an
9 incapacitated adult or facility resident being subjected to
10 conditions that are likely to result in abuse, neglect or an
11 emergency situation, the person shall immediately report the
12 circumstances pursuant to the provisions of section eleven of this
13 article: *Provided*, That nothing in this article is intended to
14 prevent individuals from reporting on their own behalf.

15 (b) In addition to those persons and officials specifically
16 required to report situations involving suspected abuse or neglect
17 of an incapacitated adult or facility resident or the existence of
18 an emergency situation, any other person may make such a report.

19 (c) The secretary shall develop a form for the filing of
20 written complaints, as provided by section eleven of this article,
21 and provide these forms to all nursing homes or other residential
22 facilities, hospitals, ombudsmen and adult protective service
23 agencies in this state. The forms shall be designed to protect the
24 identity of the complainant, if desired, and to facilitate the

1 prompt filing of complaints.

2 (d) The Department of Health and Human Resources shall develop
3 and implement a procedure to notify any person mandated to report
4 suspected abuse and neglect of an incapacitated adult or facility
5 resident of whether an investigation into the reported suspected
6 abuse or neglect has been initiated and when the investigation is
7 completed.