

**WEST VIRGINIA LEGISLATURE**  
**EIGHTY-FIRST LEGISLATURE**  
**REGULAR SESSION, 2014**



**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 395**

(SENATOR PALUMBO, *ORIGINAL SPONSOR*)

[PASSED MARCH 8, 2014; IN EFFECT NINETY DAYS FROM PASSAGE.]

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(SENATOR PALUMBO, *original sponsor*)

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-5-8b; and to amend said code by adding thereto a new section, designated §61-4-9, all relating generally to the operation and oversight of certain benefit programs; granting certain subpoena power to the Investigations and Fraud Management Division within the Department of Health and Human Resources to investigate welfare fraud; authorizing the Investigations and Fraud Management Division to request search warrants, swear to complaints and seek relevant orders from circuit court in certain situations; providing access to out-of-state documents in certain circumstances; prohibiting disclosure of persons under investigation by the Investigations and Fraud Management Division; defining terms; creating misdemeanor and felony offenses for certain unlawful use of certain benefits or benefit access devices; stating certain presumptions and calculations

permissible in prosecution of these offenses; providing an alternative to confinement for individuals convicted of the offenses associated with unlawful use of certain benefits; and precluding certain prosecution under multiple sections for conduct arising out of the same transaction or occurrence.

*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 §9-5-8b; and that said code be amended by adding thereto a new section, designated §61-4-9, all to read as follows:

**CHAPTER 9. HUMAN SERVICES.**

**ARTICLE 5. MISCELLANEOUS PROVISIONS.**

**§9-5-8b. Authority of Investigations and Fraud Management  
Division to subpoena witnesses and documents.**

1 (a) When the Investigations and Fraud Management  
2 Division of the Office of the Inspector General, which is  
3 charged with investigating welfare fraud and intra-agency  
4 employee misconduct, has credible information that indicates  
5 a person has engaged in an act or activity related to  
6 Department of Health and Human Resources programs,  
7 benefits or intra-agency employee misconduct which is  
8 subject to prosecution, it may conduct an investigation to  
9 determine if the act has been committed. To the extent  
10 necessary to the investigation, the secretary or an employee  
11 of the Office of the Inspector General designated by the  
12 secretary may administer oaths or affirmations and issue  
13 subpoenas for witnesses and documents relevant to the  
14 investigation, including information concerning the existence,  
15 description, nature, custody, condition and location of any  
16 book, record, documents or other tangible thing and the

17 identity and location of persons having knowledge of relevant  
18 facts or any matter reasonably calculated to lead to the  
19 discovery of admissible evidence.

20       When the Investigations and Fraud Management Division  
21 has probable cause to believe that a person has engaged in an  
22 act or activity which is subject to prosecution relating to  
23 Department of Health and Human Resources programs,  
24 benefits or intra-agency employee misconduct, the secretary  
25 or an employee of the Office of the Inspector General  
26 designated by the secretary may request search warrants and  
27 present and swear or affirm criminal complaints.

28       (b) If documents necessary to an investigation of the  
29 Investigations and Fraud Management Division appear to be  
30 located outside the state, the documents shall be made  
31 available by the person or entity within the jurisdiction of the  
32 state having control over such documents either at a  
33 convenient location within the state or, upon payment of  
34 necessary expenses to the division for transportation and  
35 inspection, at the place outside the state where these  
36 documents are maintained.

37       (c) Upon failure of a person to comply with a subpoena  
38 or a subpoena for the production of evidence or failure of a  
39 person to give testimony without lawful excuse and upon  
40 reasonable notice to all persons affected thereby, the  
41 Investigations and Fraud Management Division may apply to  
42 the circuit court of the county in which compliance is sought  
43 for appropriate orders to compel obedience with the  
44 provisions of this section.

45       (d) The Investigations and Fraud Management Division  
46 may not make public the name or identity of a person whose  
47 acts or conduct is investigated pursuant to this section or the  
48 facts disclosed in an investigation except as the same may be

49 used in any legal action or enforcement proceeding brought  
50 pursuant to this code or federal law.

**CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

**ARTICLE 4. FORGERY AND CRIMES AGAINST THE  
CURRENCY.**

**§61-4-9. Unauthorized use, transfer, acquisition, alteration or  
possession of certain benefits.**

1 (a) For the purposes of this section:

2 (1) “Benefits” means any payment, allotments, money,  
3 goods or other things of value granted pursuant to a benefit  
4 program;

5 (2) “Benefit access device” means any card, plate,  
6 account number or other means of access that can be used,  
7 alone or in conjunction with another access device, to obtain  
8 payments, allotments, benefits, money, goods or other things  
9 of value that can be used to initiate a transfer of funds;

10 (3) “Benefit program” includes the Federal Food Stamp  
11 Act, Supplemental Nutritional Assistance Program,  
12 Temporary Assistance to Needy Families or other similar  
13 state or federal financial assistance program; and

14 (4) “Terms of the benefit program” includes all statutes,  
15 rules, regulations or other requirements of that specific  
16 benefit program for use of the benefits.

17 (b) Any person who knowingly uses, transfers, acquires,  
18 alters or possesses benefits or one or more benefit access  
19 device contrary to the terms of the benefit program shall:

20 (1) If the benefits are of a value of less than \$1,000, be  
21 guilty of a misdemeanor and, upon conviction thereof, shall for  
22 a first offense be fined not more than \$1,000 or confined in a  
23 regional jail for not more than one year, or both fined and  
24 confined, and for a second and any subsequent offense shall be  
25 fined not more than \$1,000 or confined in a regional jail for not  
26 less than thirty days and not more than one year;

27 (2) If the benefits are of a value of \$1,000 or more, but less  
28 than \$5,000, be guilty of a felony and, upon conviction, shall  
29 for a first offense be fined not more than \$10,000 or imprisoned  
30 in a state correctional facility for not more than three years, or  
31 both fined and imprisoned, and for a second and any subsequent  
32 offense shall be fined not more than \$10,000 or imprisoned for  
33 not less than six months nor more than five years, or both fined  
34 and imprisoned; and

35 (3) If the benefits are of a value of \$5,000 or more, be  
36 guilty of a felony and, upon conviction, fined not more than  
37 \$250,000 or imprisoned in a state correctional facility for not  
38 more than ten years, or both fined and imprisoned.

39 (c) Any person who presents, or causes to be presented,  
40 benefits or one or more benefit access device for payment,  
41 allotments, money, goods or other things of value knowing the  
42 same to have been received, transferred or used in any manner  
43 in violation of the terms of the benefit program is:

44 (1) If the benefits are of a value of less than \$1,000, guilty  
45 of a misdemeanor and, upon conviction, shall for a first offense  
46 be fined not more than \$1,000 or confined in a regional jail for  
47 not more than one year, or both fined and confined, and for a  
48 second and any subsequent conviction shall be fined not more  
49 than \$1,000 or confined in a regional jail for not less than thirty  
50 days and not more than one year;

51       (2) If the benefits are of a value of \$1,000 or more, guilty of  
52 a felony and, upon conviction, shall for a first offense be fined  
53 not more than \$20,000 or imprisoned in a state correctional  
54 facility for not more than five years, or both fined and  
55 imprisoned, and for a second and any subsequent conviction  
56 shall be fined not more than \$20,000 or imprisoned in a state  
57 correctional facility for not less than one year nor more than  
58 five years, or both fined and imprisoned.

59       (d) Notwithstanding the penalties contained in this section,  
60 in the case of any individual convicted of an offense under this  
61 section, the court may permit the individual to perform work  
62 approved by the court, in lieu of confinement, for the purpose  
63 of providing restitution for losses incurred by the United States  
64 and the state agency as a result of the offense for which the  
65 individual was convicted. If the court permits the individual to  
66 perform work and the individual agrees, the court shall withhold  
67 the imposition of the sentence on the condition that the  
68 individual perform the assigned work. Upon the successful  
69 completion of the assigned work the court shall waive any  
70 confinement from the sentence.

71       (e) For purposes of this section, possession of two or more  
72 benefit access devices without authorization is prima facie  
73 evidence that an individual has knowledge the possession of the  
74 benefit access devices is a violation of the terms of the benefit  
75 program.

76       (f) In determining the value in this section, it is permissible  
77 to cumulate amounts or values of benefits.

78       (g) Notwithstanding any provision of this code to the  
79 contrary, no person who knowingly acquires benefits or one or  
80 more benefit access device contrary to the terms of the benefit  
81 program may be subject to prosecution under both this section  
82 and section four, article five, chapter nine of this code for  
83 conduct arising out of the same transaction or occurrence.

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

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*Chairman Senate Committee*

.....  
*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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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this  
the..... Day of ....., 2014.

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*Governor*