

COMMITTEE SUBSTITUTE

FOR

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Senate Bill No. 395

(By Senator Palumbo)

[Originating in the Committee on the Judiciary;
reported January 31, 2014.]

A BILL 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; and providing an alternative to confinement for individuals convicted of the offenses associated with unlawful use of certain benefits.

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
15 existence, description, nature, custody, condition and location
16 of any book, record, documents or other tangible thing and
17 the identity and location of persons having knowledge of

18 relevant facts or any matter reasonably calculated to lead to
19 the 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.

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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
22 for a first offense be fined not more than \$1,000 or confined
23 in a regional jail for not more than one year, or both fined
24 and confined, and for a second and any subsequent offense
25 shall be fined not more than \$1,000 or confined in a regional
26 jail for not 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
28 less than \$5,000, be guilty of a felony and, upon conviction,
29 shall for a first offense be fined not more than \$10,000 or
30 imprisoned in a state correctional facility for not more than
31 three years, or both fined and imprisoned, and for a second
32 and any subsequent offense shall be fined not more than
33 \$10,000 or imprisoned for not less than six months nor more
34 than five years, or both fined 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
42 the same to have been received, transferred or used in any
43 manner in violation of the terms of the benefit program is:

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

51 (2) If the benefits are of a value of \$1,000 or more, guilty
52 of a felony and, upon conviction, shall for a first offense be
53 fined not more than \$20,000 or imprisoned in a state
54 correctional facility for not more than five years, or both
55 fined and imprisoned, and for a second and any subsequent
56 conviction shall be fined not more than \$20,000 or
57 imprisoned in a state correctional facility for not less than

58 one year nor more than five years, or both fined and
59 imprisoned.

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

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

76 possession of the benefit access devices is a violation of the
77 terms of the benefit program.

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