

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

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5 FOR

6 **Senate Bill No. 395**

7 (By Senator Palumbo)

8 _____
9 [Originating in the Committee on the Judiciary;

10 reported January 31, 2014.]

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12
13 A BILL to amend the Code of West Virginia, 1931, as amended, by
14 adding thereto a new section, designated §9-5-8b; and to amend
15 said code by adding thereto a new section, designated §61-4-9,
16 all relating generally to the operation and oversight of
17 certain benefit programs; granting certain subpoena power to
18 the Investigations and Fraud Management Division within the
19 Department of Health and Human Resources to investigate
20 welfare fraud; authorizing the Investigations and Fraud
21 Management Division to request search warrants, swear to
22 complaints and seek relevant orders from circuit court in
23 certain situations; providing access to out-of-state documents
24 in certain circumstances; prohibiting disclosure of persons
25 under investigation by the Investigations and Fraud Management
26 Division; defining terms; creating misdemeanor and felony

1 offenses for certain unlawful use of certain benefits or
2 benefit access devices; stating certain presumptions and
3 calculations permissible in prosecution of these offenses;
4 providing an alternative to confinement for individuals
5 convicted of the offenses associated with unlawful use of
6 certain benefits; and precluding certain prosecution under
7 multiple sections for conduct arising out of the same
8 transaction or occurrence.

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

10 That the Code of West Virginia, 1931, as amended, be amended
11 by adding thereto a new section, designated §9-5-8b; and that said
12 code be amended by adding thereto a new section, designated
13 §61-4-9, all to read as follows:

14 **CHAPTER 9. HUMAN SERVICES.**

15 **ARTICLE 5. MISCELLANEOUS PROVISIONS.**

16 **§9-5-8b. Authority of Investigations and Fraud Management Division**
17 **to subpoena witnesses and documents.**

18 (a) When the Investigations and Fraud Management Division of
19 the Office of the Inspector General, which is charged with
20 investigating welfare fraud and intra-agency employee misconduct,
21 has credible information that indicates a person has engaged in an
22 act or activity related to Department of Health and Human Resources
23 programs, benefits or intra-agency employee misconduct which is
24 subject to prosecution, it may conduct an investigation to
25 determine if the act has been committed. To the extent necessary to

1 the investigation, the secretary or an employee of the Office of
2 the Inspector General designated by the secretary may administer
3 oaths or affirmations and issue subpoenas for witnesses and
4 documents relevant to the investigation, including information
5 concerning the existence, description, nature, custody, condition
6 and location of any book, record, documents or other tangible thing
7 and the identity and location of persons having knowledge of
8 relevant facts or any matter reasonably calculated to lead to the
9 discovery of admissible evidence.

10 When the Investigations and Fraud Management Division has
11 probable cause to believe that a person has engaged in an act or
12 activity which is subject to prosecution relating to Department of
13 Health and Human Resources programs, benefits or intra-agency
14 employee misconduct, the secretary or an employee of the Office of
15 the Inspector General designated by the secretary may request
16 search warrants and present and swear or affirm criminal
17 complaints.

18 (b) If documents necessary to an investigation of the
19 Investigations and Fraud Management Division appear to be located
20 outside the state, the documents shall be made available by the
21 person or entity within the jurisdiction of the state having
22 control over such documents either at a convenient location within
23 the state or, upon payment of necessary expenses to the division
24 for transportation and inspection, at the place outside the state
25 where these documents are maintained.

26 (c) Upon failure of a person to comply with a subpoena or a

1 subpoena for the production of evidence or failure of a person to
2 give testimony without lawful excuse and upon reasonable notice to
3 all persons affected thereby, the Investigations and Fraud
4 Management Division may apply to the circuit court of the county in
5 which compliance is sought for appropriate orders to compel
6 obedience with the provisions of this section.

7 (d) The Investigations and Fraud Management Division may not
8 make public the name or identity of a person whose acts or conduct
9 is investigated pursuant to this section or the facts disclosed in
10 an investigation except as the same may be used in any legal action
11 or enforcement proceeding brought pursuant to this code or federal
12 law.

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

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

15 **§61-4-9. Unauthorized use, transfer, acquisition, alteration or**
16 **possession of certain benefits.**

17 (a) For the purposes of this section:

18 (1) "Benefits" means any payment, allotments, money, goods or
19 other things of value granted pursuant to a benefit program;

20 (2) "Benefit access device" means any card, plate, account
21 number or other means of access that can be used, alone or in
22 conjunction with another access device, to obtain payments,
23 allotments, benefits, money, goods or other things of value that
24 can be used to initiate a transfer of funds;

25 (3) "Benefit program" includes the Federal Food Stamp Act,

1 Supplemental Nutritional Assistance Program, Temporary Assistance
2 to Needy Families or other similar state or federal financial
3 assistance program; and

4 (4) "Terms of the benefit program" includes all statutes,
5 rules, regulations or other requirements of that specific benefit
6 program for use of the benefits.

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

10 (1) If the benefits are of a value of less than \$1,000, be
11 guilty of a misdemeanor and, upon conviction thereof, shall for a
12 first offense be fined not more than \$1,000 or confined in a
13 regional jail for not more than one year, or both fined and
14 confined, and for a second and any subsequent offense shall be
15 fined not more than \$1,000 or confined in a regional jail for not
16 less than thirty days and not more than one year;

17 (2) If the benefits are of a value of \$1,000 or more, but less
18 than \$5,000, be guilty of a felony and, upon conviction, shall for
19 a first offense be fined not more than \$10,000 or imprisoned in a
20 state correctional facility for not more than three years, or both
21 fined and imprisoned, and for a second and any subsequent offense
22 shall be fined not more than \$10,000 or imprisoned for not less
23 than six months nor more than five years, or both fined and
24 imprisoned; and

25 (3) If the benefits are of a value of \$5,000 or more, be
26 guilty of a felony and, upon conviction, fined not more than

1 \$250,000 or imprisoned in a state correctional facility for not
2 more than ten years, or both fined and imprisoned.

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

8 (1) If the benefits are of a value of less than \$1,000, guilty
9 of a misdemeanor and, upon conviction, shall for a first offense be
10 fined not more than \$1,000 or confined in a regional jail for not
11 more than one year, or both fined and confined, and for a second
12 and any subsequent conviction shall be fined not more than \$1,000
13 or confined in a regional jail for not less than thirty days and
14 not more than one year;

15 (2) If the benefits are of a value of \$1,000 or more, guilty
16 of a felony and, upon conviction, shall for a first offense be
17 fined not more than \$20,000 or imprisoned in a state correctional
18 facility for not more than five years, or both fined and
19 imprisoned, and for a second and any subsequent conviction shall be
20 fined not more than \$20,000 or imprisoned in a state correctional
21 facility for not less than one year nor more than five years, or
22 both fined and imprisoned.

23 (d) Notwithstanding the penalties contained in this section,
24 in the case of any individual convicted of an offense under this
25 section, the court may permit the individual to perform work
26 approved by the court, in lieu of confinement, for the purpose of

1 providing restitution for losses incurred by the United States and
2 the state agency as a result of the offense for which the
3 individual was convicted. If the court permits the individual to
4 perform work and the individual agrees, the court shall withhold
5 the imposition of the sentence on the condition that the individual
6 perform the assigned work. Upon the successful completion of the
7 assigned work the court shall waive any confinement from the
8 sentence.

9 (e) For purposes of this section, possession of two or more
10 benefit access devices without authorization is prima facie
11 evidence that an individual has knowledge the possession of the
12 benefit access devices is a violation of the terms of the benefit
13 program.

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

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