

E N G R O S S E D  
COMMITTEE SUBSTITUTE  
FOR  
COMMITTEE SUBSTITUTE  
FOR  
**Senate Bill No. 395**

(By Senator Palumbo)

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

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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  
5   indicates a person has engaged in an act or activity related  
6   to 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  
16   location of any book, record, documents or other tangible  
17   thing and the identity and location of persons having

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

5 [Eng. Com. Sub. for Com. Sub. for S. B. No. 395

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:

7

[Eng. Com. Sub. for Com. Sub. for S. B. No. 395

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



9 [Eng. Com. Sub. for Com. Sub. for S. B. No. 395

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

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

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

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

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