WEST VIRGINIA CODE: §61-4-9

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

(a) For the purposes of this section:

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

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

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

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

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

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

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

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

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

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the benefit program is:

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

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

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

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

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

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

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