

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996

ENROLLED

Com. Sub. For  
HOUSE BILL No. 4141

(By Delegates Givens, Louisa, Osborne,  
Prunty, Varner, Calvert and Given)

Passed March 8, 1996

In Effect Ninety Days From Passage

**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**

**H. B. 4141**

(BY DELEGATES GIVENS, LOUISOS, OSBORNE,  
PRUNTY, VARNER, CALVERT AND GIVEN)

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[Passed March 8, 1996; in effect ninety days from passage.]

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AN ACT to amend chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-c; and to amend article seven, chapter fifty-five of said code by adding thereto a new section, designated section eighteen, all relating to establishing a central abuse registry; defining terms; requiring certain individuals convicted of a felony or misdemeanor offense with respect to a child or incapacitated adult to be placed on registry; requiring prosecuting attorneys to report certain convictions; permitting disclosure of certain information; providing for expungement of listings in certain circumstances; establishing user fees for registry purposes; establishing service provider responsibilities; and providing limited immunity from suit for residential care facilities, day care centers and home care service providers disclosing employment information.

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

That chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article two-c; and that article

seven, chapter fifty-five of said code be amended by adding thereto a new section, designated section eighteen, all to read as follows:

## **CHAPTER 15. DIVISION OF PUBLIC SAFETY.**

### **ARTICLE 2C. CENTRAL ABUSE REGISTRY.**

#### **§15-2C-1. Definitions.**

1       The following words when used in this article have  
2 meanings ascribed to them in this section, except in those  
3 instances where the context clearly indicates a different  
4 meaning:

5       (a) "Central abuse registry" or "registry" means the  
6 registry created by this article which shall contain the  
7 names of individuals who have been convicted of a felony  
8 or a misdemeanor offense constituting abuse, neglect or  
9 misappropriation of the property of a child or an incapac-  
10 itated adult.

11       (b) "Child abuse and neglect" or "child abuse or ne-  
12 glect" means those terms as defined in section three, article  
13 one, chapter forty-nine of this code, and shall include any  
14 act with respect to a child which is a crime against the  
15 person pursuant to article two, chapter sixty-one of this  
16 code, any act which is unlawful pursuant to article eight-d  
17 of said chapter sixty-one, and any offense with respect to a  
18 child which is enumerated in section three of this article.

19       (c) "Abuse or neglect of an incapacitated adult" means  
20 "abuse" "neglect" and "incapacitated adult" as those terms  
21 are defined in section one, article six, chapter nine, and  
22 shall include any act with respect to an incapacitated adult  
23 which is a crime against the person pursuant to article two,  
24 chapter sixty-one of this code, and any offense with re-  
25 spect to an incapacitated adult which is enumerated in  
26 section three of this article.

27       (d) "Conviction" of a felony or a misdemeanor means  
28 an adjudication of guilt by a court or jury following a  
29 hearing on the merits, or entry of a plea of guilty or nolo

30 contendere.

31 (e) "Residential care facility" means any facility where  
 32 a child or an incapacitated adult resides which is subject to  
 33 registration, licensure or certification by the department of  
 34 health and human resources, and shall include nursing  
 35 homes, personal care homes, residential board and care  
 36 homes, adult family care homes, group homes, legally  
 37 unlicensed service providers, residential child care facili-  
 38 ties, family based foster care homes, specialized family  
 39 care homes and intermediate care facilities for the mental-  
 40 ly retarded.

41 (f) "Misappropriation of property" means any act  
 42 which is a crime against property under article three, chap-  
 43 ter sixty-one of this code with respect to a child in a resi-  
 44 dential care facility or an incapacitated adult in a residen-  
 45 tial care facility or a child or an incapacitated adult who is  
 46 a recipient of home care services.

47 (g) "Home care" or "home care services" means servic-  
 48 es provided to children or incapacitated adults in the home  
 49 through a hospice provider, a community care provider, a  
 50 home health agency, through the medicaid waiver pro-  
 51 gram, or through any person when that service is reim-  
 52 bursable under the state medicaid program.

53 (h) "Requester" means any residential care facility, any  
 54 state licensed day care center, or any provider of home  
 55 care services providing to the central abuse registry the  
 56 name of an individual and other information necessary to  
 57 identify that individual, and either (1) certifying that the  
 58 individual is being considered for employment by the  
 59 requester or for a contractual relationship with the request-  
 60 er wherein the individual will provide services to a child or  
 61 an incapacitated adult for compensation; or (2) certifying  
 62 that an allegation of abuse, neglect or misappropriation of  
 63 property has been made against the individual.

**§15-2C-2. Central abuse registry; required information; pro-  
 cedures.**

1 (a) The criminal identification bureau of the West  
2 Virginia state police shall establish a central abuse registry,  
3 to contain information relating to criminal convictions  
4 following reports of child abuse or neglect, abuse or ne-  
5 glect of an incapacitated adult, and misappropriation of  
6 property.

7 (b) The central abuse registry shall contain, at a mini-  
8 mum, information relating to: (1) convictions of a misde-  
9 meanor or a felony constituting abuse, neglect or misap-  
10 propriation of property, by an individual performing  
11 services for compensation, within the scope of the individ-  
12 ual's employment or contract to provide services, in a  
13 residential care facility, in a licensed day care center, or in  
14 connection with the provision of home care services; (2)  
15 information relating to individuals convicted of specific  
16 offenses enumerated in subsection (a), section three of this  
17 article with respect to a child or an incapacitated adult; and  
18 (3) information relating to all individuals required to reg-  
19 ister with the West Virginia state police as sex offenders  
20 pursuant to the provisions of article eight-f, chapter  
21 sixty-one of this code. The central abuse registry shall  
22 contain the following information with respect to an indi-  
23 vidual found to have committed an act of abuse, neglect or  
24 misappropriation of property, or an individual convicted  
25 of a felony offense:

26 (1) The individual's full name;

27 (2) Sufficient information to identify the individual,  
28 including date of birth, social security number and finger-  
29 prints, if available;

30 (3) Identification of the criminal offense constituting  
31 abuse, neglect or misappropriation of property of a child  
32 or an incapacitated adult;

33 (4) For cases involving abuse, neglect or misappropri-  
34 ation of property of a child or an incapacitated adult in a  
35 residential care facility or a day care center, or of a child  
36 or an incapacitated adult receiving home care services,  
37 sufficient information to identify the location where such

38 documentation of any investigation by the department of  
39 health and human resources is on file and the location of  
40 pertinent court files; and

41 (5) Any statement by the individual disputing the  
42 conviction, if he or she chooses to make and file one.

43 (c) Upon conviction in the criminal courts of this state  
44 of a misdemeanor or a felony offense constituting child  
45 abuse or neglect or abuse or neglect of an incapacitated  
46 adult, the individual so convicted shall be placed on the  
47 central abuse registry.

**§15-2C-3. Reports of certain convictions by prosecuting attorneys.**

1 (a) The central abuse registry shall maintain informa-  
2 tion relating to child abuse or neglect, abuse or neglect of  
3 an incapacitated adult, and misappropriation of property  
4 with respect to individuals convicted of certain offenses  
5 pursuant to this code, when the victim of the crime is a  
6 child or an incapacitated adult, to include:

7 (1) First or second degree murder pursuant to section  
8 one, article two, chapter sixty-one of this code;

9 (2) Voluntary manslaughter pursuant to section four,  
10 article two, chapter sixty-one of this code;

11 (3) Attempt to kill or injure by poison pursuant to  
12 section seven, article two, chapter sixty-one of this code;

13 (4) Malicious or unlawful assault pursuant to section  
14 nine, article two, chapter sixty-one of this code;

15 (5) Assault during commission of or attempt to com-  
16 mit a felony pursuant to section ten, article two, chapter  
17 sixty-one of this code;

18 (6) Extortion by threats pursuant to section thirteen,  
19 article two, chapter sixty-one of this code;

20 (7) Abduction of a person or kidnapping or conceal-  
21 ing a child pursuant to section fourteen, article two, chap-

22 ter sixty-one of this code;

23 (8) Enticing away or otherwise kidnapping any person  
24 pursuant to section fourteen-a, article two, chapter  
25 sixty-one of this code;

26 (9) A misdemeanor or felony sexual offense pursuant  
27 to article eight-b, chapter sixty-one of this code;

28 (10) Filming of sexually explicit conduct of minors  
29 pursuant to article eight-c, chapter sixty-one of this code;

30 (11) Misdemeanor or felony child abuse pursuant to  
31 article eight-d, chapter sixty-one of this code;

32 (12) A violent crime against the elderly which is an  
33 offense under the provisions of section nine or ten, article  
34 two, chapter sixty-one of this code which is subject to the  
35 sentencing provisions of section ten-a of said article two;  
36 or

37 (13) A property offense pursuant to article three,  
38 chapter sixty-one of this code, with respect to a child in a  
39 residential care facility or an incapacitated adult in a resi-  
40 dential care facility or a child or an incapacitated adult  
41 who is a recipient of home care services, when the individ-  
42 ual committing the offense was providing services for  
43 compensation in the residential care facility or within the  
44 home.

45 (b) The prosecuting attorneys in each of the fifty-five  
46 counties within the state, upon conviction of a misdemea-  
47 nor, a felony or a lesser included misdemeanor offense for  
48 those specific offenses set forth in subsection (a) of this  
49 section, shall report the conviction to the central abuse  
50 registry, together with such additional information, provid-  
51 ed in such form, as may be required by the criminal iden-  
52 tification bureau for registry purposes. Reporting proce-  
53 dures shall be developed by the criminal identification  
54 bureau in conjunction with the prosecuting attorneys'  
55 institute and the office of the administrator of the supreme  
56 court of appeals.

57 (c) Information relating to convictions prior to the  
58 effective date of this section of a misdemeanor or a felony  
59 constituting child abuse or abuse or neglect of an incapac-  
60 itated adult shall, to the extent which is feasible and practi-  
61 cable, be placed on the central abuse registry. When any  
62 requester requests information related to a named individ-  
63 ual, the criminal identification bureau may search and  
64 release other information maintained by the bureau to  
65 determine whether that individual has been convicted of  
66 offenses which are subject to inclusion on the registry.

**§15-2C-4. Disclosure of information.**

1 (a) The information contained in the central abuse  
2 registry is confidential, and may not be disclosed except as  
3 specifically provided in this section. The criminal identifi-  
4 cation bureau shall disclose the information described in  
5 subdivisions one through three and subdivision five, sub-  
6 section (b), section two of this article to any requester,  
7 except that the name of the victim of the act alleged shall  
8 not appear on the information disclosed and shall be  
9 stricken from any statement filed by an individual. The  
10 department of health and human resources shall certify,  
11 not later than fifteen days following the effective date of  
12 this section, the list of requesters authorized to obtain  
13 registry information, and shall inform the criminal identi-  
14 fication bureau promptly of subsequent additions and  
15 deletions from the list. The information contained in the  
16 registry with respect to an individual shall be provided to  
17 that individual promptly upon request. Individuals on the  
18 registry requesting registry information shall be afforded  
19 the opportunity to file statements correcting any misstate-  
20 ments or inaccuracies contained in the registry. The crim-  
21 inal identification bureau may disclose registry informa-  
22 tion to authorized law-enforcement and governmental  
23 agencies of the United States and its territories, of foreign  
24 states and of the state of West Virginia upon proper re-  
25 quest stating that the information requested is necessary in  
26 the interest of and will be used solely in the administration  
27 of official duties and the criminal laws. Agreements with



28 other states providing for the reciprocal sharing of abuse  
29 registry information are specifically authorized.

30 (b) An active file on requests for information by re-  
31 questers shall be maintained by the criminal identification  
32 bureau for a period of one year from the date of a re-  
33 quest. If an individual who is the subject of the request is  
34 placed on the registry with respect to any conviction with-  
35 in one year of the date of the request, that information  
36 shall promptly be disclosed to the requester.

**§15-2C-5. Expungement of registry listing.**

1 Registry listings of abuse, neglect or misappropriation  
2 of property with respect to an individual shall promptly be  
3 expunged in cases where a conviction is vacated or over-  
4 turned following appeal by a court having jurisdiction;  
5 where the record of a conviction is expunged by a court  
6 having jurisdiction; or in cases where the individual so  
7 convicted is granted executive clemency with respect to  
8 the conviction.

**§15-2C-6. Fees.**

1 The criminal identification bureau may charge, and  
2 any requester shall pay a user charge of ten dollars for  
3 each request for information made by a requester to the  
4 central abuse registry. In order to expedite requests by  
5 requesters, the criminal identification bureau may establish  
6 a procedure permitting service providers to deposit funds  
7 with the bureau in anticipation of requests. Fees pursuant  
8 to this section shall be paid into a special account in the  
9 state treasury to be expended for registry purposes: *Pro-*  
10 *vided*, That for and after the fiscal year ending the thirtieth  
11 day of June, one thousand nine hundred ninety-eight, all  
12 expenditures shall be made in accordance with appropria-  
13 tion by the Legislature. Amounts collected which are  
14 found from time to time to exceed the funds needed for  
15 central abuse registry purposes may be transferred to  
16 other accounts or funds and redesignated for other pur-  
17 poses by appropriation of the Legislature.

**§15-2C-7. Registration of home care agencies required; form of registration; information to be provided.**

1 (a) In order to permit providers of home care services  
2 not otherwise required to be licensed, certified or regis-  
3 tered with the department of health and human resources  
4 by other provision of this code to access information in  
5 the central abuse registry, all home care service providers  
6 not currently licensed, certified or registered by the de-  
7 partment shall register with the office of health facilities  
8 licensure and certification. No fee may be charged for  
9 registration. Registration information shall be provided  
10 on a registration form, but no provision of information  
11 shall be deemed to meet the registration requirement until  
12 the signature of the service provider is recorded on the  
13 registration form.

14 (b) Information required for registration shall include  
15 the following:

16 (1) Name, address and telephone number of the ser-  
17 vice provider;

18 (2) The geographic area where services are provided  
19 to consumers, the number of homes where services are  
20 provided and the number of consumers provided service;  
21 and

22 (3) The services, such as nursing care or personal  
23 assistance, provided to consumers.

**§15-2C-8. Service provider responsibilities.**

1 All residential care facilities, day care centers and  
2 home care service providers authorized to operate in West  
3 Virginia shall:

4 (1) Provide notice to current employees of the agency  
5 and other persons providing services under a contract with  
6 the agency within sixty days of the effective date of this  
7 article, and provide notice to any newly hired employee or  
8 person at the time an employment or contractual relation-  
9 ship is entered into, which notice shall be in the following

10 form: "NOTICE: All service providers in the state of West  
11 Virginia are subject to provisions of law creating a central  
12 abuse registry. Any person providing services for com-  
13 pensation to children or to incapacitated adults, who is  
14 convicted of a misdemeanor or felony offense constituting  
15 abuse, neglect or misappropriation of property of a child  
16 or an incapacitated adult, is subject to listing on the central  
17 abuse registry. The fact that a person is listed on the reg-  
18 istry may be disclosed in specific instances provided by  
19 law. Listing on the registry may limit future employment  
20 opportunities, including opportunities for employment  
21 with residential care facilities, day care centers and home  
22 care agencies. It is the policy of \_\_\_\_\_  
23 [name of agency] to promptly report all suspected in-  
24 stances of abuse, neglect or misappropriation of property  
25 to the proper authorities and to cooperate fully in the  
26 prosecution of these offenses."

27 (2) Cooperate fully with law enforcement, prosecuting  
28 attorneys and court personnel in criminal prosecutions of  
29 acts of child abuse or neglect or abuse or neglect of an  
30 incapacitated adult.

31 (3) Respond promptly to all requests by other service  
32 providers for references for former or present employees  
33 of the agency, which response may include a subjective  
34 assessment as to whether the individual for whom the ref-  
35 erence is sought is suited to provide services to children or  
36 incapacitated adults.

## **CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.**


### **ARTICLE 7. ACTIONS FOR INJURIES.**

#### **§55-7-18. Limiting liability of home care service providers, day care centers and residential care facilities disclosing certain employment information.**

1 When a residential care facility required to be regis-  
2 tered, licensed or certified under the laws of the state, a  
3 licensed day care center, or an agency providing services

4 in the home to children or incapacitated adults is asked to  
5 provide an employment reference with respect to a named  
6 individual who provided services to children or incapacitated  
7 adults for compensation, no person shall be liable for  
8 disclosing information related to the named individual's  
9 employment history, including a subjective assessment of  
10 whether the named individual is suited to provide services  
11 to children or incapacitated adults, unless it is alleged and  
12 proven that the information disclosed was false and dis-  
13 closed with knowledge that the information was false.

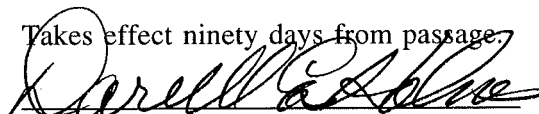
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

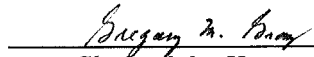
  
Chairman Senate Committee


  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

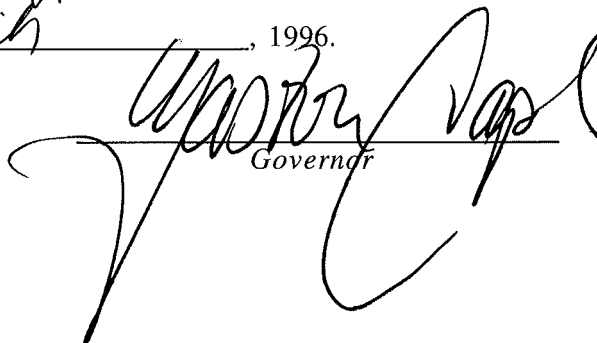
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 25<sup>th</sup>  
day of March, 1996.

  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/96

Time 10:15 am