

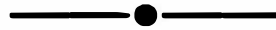
HB 4500

FILED

2008 MAR 12 AM 4:48

SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 4500**

(By Delegates Webster, Mahan, Long, Campbell,
laquinta, Staggers, Yost, Varner and Ennis)



Passed March 5, 2008

In Effect Ninety Days from Passage

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COMMITTEE SUBSTITUTE

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H. B. 4500

(BY DELEGATES WEBSTER, MAHAN, LONG, CAMPBELL,
LAQUINTA, STAGGERS, YOST, VARNER AND ENNIS)

[Passed March 5, 2008; in effect ninety days from passage.]

AN ACT to amend and reenact §15-2C-1 and §15-2C-6 of the Code of West Virginia, 1931, as amended, and to amend said code by adding a new section, designated §15-2C-9, all relating to providing qualified entities access to the West Virginia Central Abuse Registry; amending and adding definitions; defining the responsibilities of qualified entities; charging fees for requests by qualified entities; and keeping records of security audits.

Be it enacted by the Legislature of West Virginia:

That §15-2C-1 and §15-2C-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding a new section, designated §15-2C-9, to read as follows:

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 names
7 of individuals who have been convicted of a felony or a
8 misdemeanor offense constituting abuse, neglect or
9 misappropriation of the property of a child or an
10 incapacitated adult or an adult receiving behavioral health
11 services.

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

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

28 (d) "Adult receiving behavioral health services" means a
29 person over the age of eighteen years who is receiving any
30 behavioral health service from a licensed behavioral health
31 provider or any behavioral health provider whose services are
32 paid for, in whole or in part, by medicaid or medicare.

33 (e) "Conviction" of a felony or a misdemeanor means an
34 adjudication of guilt by a court or jury following a hearing on
35 the merits, or entry of a plea of guilty or nolo contendere.

36 (f) "Residential care facility" means any facility where a
37 child or an incapacitated adult or an adult receiving
38 behavioral health services resides which is subject to
39 registration, licensure or certification by the department of
40 health and human resources, and shall include nursing homes,
41 personal care homes, residential board and care homes, adult
42 family care homes, group homes, legally unlicensed service
43 providers, residential child care facilities, family based foster
44 care homes, specialized family care homes and intermediate
45 care facilities for the mentally retarded.

46 (g) "Misappropriation of property" means any act which
47 is a crime against property under article three, chapter sixty-
48 one of this code with respect to a child in a residential care
49 facility or an incapacitated adult or an adult receiving
50 behavioral health services in a residential care facility or a
51 child or an incapacitated adult or an adult receiving
52 behavioral health services who is a recipient of home care
53 services.

54 (h) "Home care" or "home care services" means services
55 provided to children or incapacitated adults or adults
56 receiving behavioral health services in the home through a
57 hospice provider, a community care provider, a home health
58 agency, through the medicaid waiver program, or through
59 any person when that service is reimbursable under the state
60 medicaid program.

61 (i) "Requester" means the West Virginia department of
62 education, any residential care facility, any state licensed day
63 care center, any qualified entity as defined in this section or
64 any provider of home care services or an adult receiving

65 behavioral health services providing to the central abuse
66 registry the name of an individual and other information
67 necessary to identify that individual, and either: (1)
68 Certifying that the individual is being considered for
69 employment or service as a volunteer by the requester or for
70 a contractual relationship with the requester wherein the
71 individual will provide services to a child or an incapacitated
72 adult or an adult receiving behavioral health services for
73 compensation; or contractors and vendors who have or may
74 have unsupervised access to the child, disabled or elderly
75 person for whom the qualified entity provides care; or (2)
76 certifying that an allegation of abuse, neglect or
77 misappropriation of property has been made against the
78 individual.

79 (j) "Qualified entity" means any business, agency or
80 organization that provides care, treatment, education,
81 training, instruction, supervision or recreation for children,
82 the elderly or individuals with disabilities and is a public,
83 private or not-for-profit entity within the state of West
84 Virginia and meets the definition of qualified entity under the
85 federal National Child Protection Act of 1993; P.L. 103-209
86 as amended by the Volunteers for Children Act; P.L. 105-
87 251.

§15-2C-6. Fees.

1 The criminal identification bureau may charge, and any
2 requester shall pay a user charge of ten dollars for each
3 request for information made by a requester to the central
4 abuse registry. In order to expedite requests by requesters, the
5 criminal identification bureau may establish a procedure
6 permitting service providers or qualified entities as defined
7 in section one of this article to deposit funds with the bureau
8 in anticipation of requests. Fees pursuant to this section shall
9 be paid into a special account in the State Treasury to be

10 expended for registry purposes and criminal record keeping:
11 *Provided*, That for and after the fiscal year ending the
12 thirtieth day of June, one thousand nine hundred ninety-eight,
13 all expenditures shall be made in accordance with
14 appropriation by the Legislature. Amounts collected which
15 are found from time to time to exceed the funds needed for
16 central abuse registry and criminal record keeping purposes
17 may be transferred to other accounts or funds and
18 redesignated for other purposes by appropriation of the
19 Legislature. For purposes of this section, the term "criminal
20 record keeping" means the compiling of fingerprints,
21 photographs, criminal disposition reports, uniform crime
22 report statistics and other relevant data regarding the arrest,
23 conviction, incarceration and post-conviction status of
24 criminal violators and sex offenders. "Criminal record
25 keeping" does not include the creation of any data.

§15-2C-9 Responsibilities of a Qualified Entity.

1 (a) Any business, agency or organization that provides
2 care, treatment, education, training, instruction, supervision
3 or recreation for children, the elderly or individuals with
4 disabilities and is a public, private or not-for-profit entity
5 within the state of West Virginia and is a qualified entity as
6 defined in section one of this article may utilize the Central
7 Abuse Registry for part of its screening process for its current
8 and/or prospective employees. Prospective employees and
9 volunteers, for the purposes of this section, include
10 contractors and vendors who have or may have unsupervised
11 access to children or disabled or elderly persons for whom
12 the qualified entity provides care.

13 (b) In order to verify eligibility as a qualified entity, the
14 business, agency or organization shall apply to the West
15 Virginia State Police on a form prescribed by the
16 Superintendent.

17 (c) Once verified as a qualified entity by the West
18 Virginia State Police, the entity shall keep all records
19 necessary to facilitate a security audit by the West Virginia
20 State Police and shall cooperate in such audits as the West
21 Virginia State Police or other authorities may deem
22 necessary. Such records include, but are not limited to,
23 criminal history records; notification that an individual has no
24 criminal history; internal policies and procedures articulating
25 the provisions for physical security; records of all
26 disseminations of criminal history information; and a current,
27 executed qualified entity user agreement with the West
28 Virginia State Police.

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

Chandy White
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within is approved this the 12th
day of March, 2008.

[Signature]
Governor

PRESENTED TO THE
GOVERNOR

MAR 10 2008

Time 4:30pm