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

(a) "Central abuse registry" or "registry" means the registry created by this article which shall contain the names of individuals who have been convicted of a felony or a misdemeanor offense constituting abuse, neglect or misappropriation of the property of a child or an incapacitated adult or an adult receiving behavioral health services.

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

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

(d) "Adult receiving behavioral health services" means a person over the age of eighteen years who is receiving any behavioral health service from a licensed behavioral health provider or any behavioral health provider whose services are paid for, in whole or in part, by medicaid or medicare.
(e) "Conviction" of a felony or a misdemeanor means an
adjudication of guilt by a court or jury following a hearing on
the merits, or entry of a plea of guilty or nolo contendere.

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

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

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

(i) "Requester" means the West Virginia department of
education, any residential care facility, any state licensed day
care center, any qualified entity as defined in this section or
any provider of home care services or an adult receiving
behavioral health services providing to the central abuse
registry the name of an individual and other information
necessary to identify that individual, and either: (1)
Certifying that the individual is being considered for
employment or service as a volunteer by the requester or for
a contractual relationship with the requester wherein the
individual will provide services to a child or an incapacitated
adult or an adult receiving behavioral health services for
compensation; or contractors and vendors who have or may
have unsupervised access to the child, disabled or elderly
person for whom the qualified entity provides care; or (2)
certifying that an allegation of abuse, neglect or
misappropriation of property has been made against the
individual.

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

§15-2C-6. Fees.

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

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

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

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

(b) In order to verify eligibility as a qualified entity, the business, agency or organization shall apply to the West Virginia State Police on a form prescribed by the Superintendent.
(c) Once verified as a qualified entity by the West Virginia State Police, the entity shall keep all records necessary to facilitate a security audit by the West Virginia State Police and shall cooperate in such audits as the West Virginia State Police or other authorities may deem necessary. Such records include, but are not limited to, criminal history records; notification that an individual has no criminal history; internal policies and procedures articulating the provisions for physical security; records of all disseminations of criminal history information; and a current, executed qualified entity user agreement with the West Virginia State Police.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In 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 12th day of March, 2008.

Governor