

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2014



ENROLLED
COMMITTEE SUBSTITUTE
FOR
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 395

(SENATOR PALUMBO, *ORIGINAL SPONSOR*)

[PASSED MARCH 8, 2014; IN EFFECT NINETY DAYS FROM PASSAGE.]

SB 395

FILED
2014 MAR 26 A 10 06
OFFICE WEST VIRGINIA
SECRETARY OF STATE

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AN ACT 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; providing an alternative to confinement for individuals convicted of the offenses associated with unlawful use of certain benefits; and precluding certain prosecution under multiple sections for conduct arising out of the same transaction or occurrence.

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 indicates
5 a person has engaged in an act or activity related to
6 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 existence,
15 description, nature, custody, condition and location of any
16 book, record, documents or other tangible thing and the

17 identity and location of persons having knowledge of relevant
18 facts or any matter reasonably calculated to lead to the
19 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.

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:

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 for
22 a first offense be fined not more than \$1,000 or confined in a
23 regional jail for not more than one year, or both fined and
24 confined, and for a second and any subsequent offense shall be
25 fined not more than \$1,000 or confined in a regional jail for not
26 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 less
28 than \$5,000, be guilty of a felony and, upon conviction, shall
29 for a first offense be fined not more than \$10,000 or imprisoned
30 in a state correctional facility for not more than three years, or
31 both fined and imprisoned, and for a second and any subsequent
32 offense shall be fined not more than \$10,000 or imprisoned for
33 not less than six months nor more than five years, or both fined
34 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 the
42 same to have been received, transferred or used in any manner
43 in violation of the terms of the benefit program is:

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

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

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

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

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

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

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
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President of the Senate

[Signature]
.....
Speaker of the House of Delegates

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2014 MAR 26 A 10:06

FILED

The within *is approved* this
the *26th* Day of *March*, 2014.

[Signature]
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 17 2014

Time 1:20 pm