

H. B. 2546

(By Delegates Frazier, Miley Brown, Caputo, Ellem, Hamilton, Longstreth, Moore and Sobonya)

[Introduced January 18, 2011; referred to the Committee on the Judiciary then Finance.]

**Interim
Bill**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §62-1G-1 and §62-1G-2, all relating to subpoena powers for aid of criminal investigations, legislative declaration of necessity; information to be disclosed in response to subpoena; content of subpoena; authorization of fee for information provided in response to subpoena; and nondisclosure of subpoena to account holder; immunity.

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 article, designated §62-1G-1 and §62-1G-2, all to read as follows:

ARTICLE 1G. SUBPOENA POWERS FOR AID OF CRIMINAL INVESTIGATION.

§62-1G-1. Declaration of necessity.

It is declared, as a matter of legislative determination, that

1 it is necessary to grant administrative subpoena powers in aid of
2 criminal investigations of crimes against children involving
3 electronic communications system or service or remote computing
4 services.

5 **§62-1G-2. Administrative subpoenas for criminal investigations**
6 **for records concerning an electronic communications**
7 **system or service or remote computing service --**
8 **Content -- Fee for providing information.**

9 (a) As used in this section:

10 (1) (A) "Electronic communication" means any transfer of signs,
11 signals, writing, images, sounds, data, or intelligence of any
12 nature transmitted, in whole or in part, by a wire, radio,
13 electromagnetic, photoelectronic, or photooptical system.

14 (B) "Electronic communication" does not include:

15 (i) Any wire or oral communication;

16 (ii) Any communication made through a tone-only paging device;

17 (iii) Any communication from a tracking device; or

18 (iv) Electronic funds transfer information stored by a
19 financial institution in a communications system used for the
20 electronic storage and transfer of funds.

21 (2) "Electronic communications service" means any service
22 which provides for users the ability to send or receive wire or
23 electronic communications;

24 (3) "Electronic communications system" means any wire, radio,

1 electromagnetic, photooptical, or photoelectronic facilities for
2 the transmission of wire or electronic communications, and any
3 computer facilities or related electronic equipment for the
4 electronic storage of the communication.

5 (4) (A) "Internet service provider" means a person or entity
6 engaged in the business of providing a computer communications
7 facility in West Virginia, with the intent of making a profit,
8 through which a consumer may obtain access to the Internet.

9 (B) "Internet service provider" does not include a common
10 carrier if it provides only telecommunications service.

11 (5) "Sexual offense against a minor" means:

12 (A) A violation or attempted violation of section five,
13 article eight-d, chapter sixty-one;

14 (B) A sexual offense or attempted sexual offense committed
15 against a minor in violation of article eight-b, chapter sixty-one;

16 (C) The distribution and display or attempted distribution and
17 display of obscene materials to a minor in violation of section
18 two, article eight-a, chapter sixty-one;

19 (D) the use or attempted use of obscene matter with the intent
20 to seduce a minor in violation of of section four, article eight-
21 a, chapter sixty-one; or

22 (E) the employment or use or the attempted employment or use
23 of a minor to produce obscene materials in violation of section

1 five, article eight-a, chapter sixty-one.

2 (5) "Remote computing service" means the provision to the
3 public of computer storage or processing services by means of an
4 electronic communications system.

5 (b) When a law-enforcement agency is investigating a sexual
6 offense against a minor, an offense of stalking under section nine-
7 a, article two, chapter sixty-one, or an offense of child
8 kidnapping under section fourteen, article two, chapter sixty-one,
9 and has reasonable suspicion that an electronic communications
10 system or service or remote computing service has been used in the
11 commission of a criminal offense, a prosecutor or magistrate may
12 issue an administrative subpoena, consistent with 18 U.S.C. 2703
13 and 18 U.S.C. 2702, to the electronic communications system or
14 service or remote computing service provider that owns or controls
15 the Internet protocol address, websites, e mail address, or service
16 to a specific telephone number, requiring the production of the
17 following information, if available, upon providing in the subpoena
18 the Internet protocol address, e mail address, telephone number, or
19 other identifier, and the dates and times the address, telephone
20 number, or other identifier was suspected of being used in the
21 commission of the offense:

22 (1) Names;

23 (2) Addresses;

24 (3) Local and long distance telephone connections;

1 (4) Records of session times and durations;

2 (5) Length of service, including the start date and types of
3 service utilized;

4 (6) Telephone or other instrument subscriber numbers or other
5 subscriber identifiers, including any temporarily assigned network
6 address; and

7 (7) Means and sources of payment for the service, including
8 any credit card or bank account numbers.

9 (c) A subpoena issued under this section shall state that the
10 electronic communications system or service or remote computing
11 service provider shall produce any records under subdivisions (1)
12 through (6) of subsection (b), that are reasonably relevant to the
13 investigation of the suspected criminal activity or offense as
14 described in the subpoena.

15 (d) (1) An electronic communications system or service or
16 remote computing service provider that provides information in
17 response to a subpoena issued under this section may charge a fee,
18 not to exceed the actual cost, for providing the information.

19 (2) The law-enforcement agency conducting the investigation
20 shall pay the fee.

21 (e) The electronic communications system or service or remote
22 computing service provider served with or responding to the
23 subpoena may not disclose the subpoena to the account holder
24 identified pursuant to the subpoena.

1 (f) If the electronic communications system or service or
2 remote computing service provider served with the subpoena does not
3 own or control the Internet protocol address, websites, or e mail
4 address, or provide service for the telephone number that is the
5 subject of the subpoena, the provider shall:

6 (1) Notify the investigating law-enforcement agency that it
7 does not have the information; and

8 (2) Provide to the investigating law-enforcement agency any
9 information the provider knows, through reasonable effort, that it
10 has regarding how to locate the Internet service provider that does
11 own or control the Internet protocol address, websites, or e mail
12 address, or provide service for the telephone number.

13 (g) Every magistrate court shall be available and responsible
14 for receiving and acting upon applications for subpoenas pursuant
15 to this section at all times other than regular office hours.

16 (h) There is no cause of action against any provider or wire
17 or electronic communication service, or its officers, employees,
18 agents, or other specified persons, for providing information,
19 facilities, or assistance in accordance with the terms of the
20 administrative subpoena issued under this section or statutory
21 authorization.

NOTE: The purpose of this bill establishes the West Virginia State Police as the entity which is authorized to issue administrative subpoenas to Internet service providers in cases of suspected child pornography; to define offenses and set forth penalties and fees.

This article is new; therefore, it has been completely underscored.

This bill was recommended for introduction and passage during the 2011 Regular Session of the Legislature by the Joint Standing Committee on the Judiciary.