

1 COMMITTEE SUBSTITUTE

2 FOR

3 COMMITTEE SUBSTITUTE

4 FOR

5 **Senate Bill No. 395**

6 (By Senator Palumbo)

7 _____
8 [Originating in the Committee on the Judiciary;
9 reported January 31, 2014.]
10 _____

11
12 A BILL to amend the Code of West Virginia, 1931, as amended, by
13 adding thereto a new section, designated §9-5-8b; and to amend
14 said code by adding thereto a new section, designated §61-4-9,
15 all relating generally to the operation and oversight of
16 certain benefit programs; granting certain subpoena power to
17 the Investigations and Fraud Management Division within the
18 Department of Health and Human Resources to investigate
19 welfare fraud; authorizing the Investigations and Fraud
20 Management Division to request search warrants, swear to
21 complaints and seek relevant orders from circuit court in
22 certain situations; providing access to out-of-state documents
23 in certain circumstances; prohibiting disclosure of persons
24 under investigation by the Investigations and Fraud Management
25 Division; defining terms; creating misdemeanor and felony
26 offenses for certain unlawful use of certain benefits or

1 benefit access devices; stating certain presumptions and
2 calculations permissible in prosecution of these offenses; and
3 providing an alternative to confinement for individuals
4 convicted of the offenses associated with unlawful use of
5 certain benefits.

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

7 That the Code of West Virginia, 1931, as amended, be amended
8 by adding thereto a new section, designated §9-5-8b; and that said
9 code be amended by adding thereto a new section, designated
10 §61-4-9, all to read as follows:

11 **CHAPTER 9. HUMAN SERVICES.**

12 **ARTICLE 5. MISCELLANEOUS PROVISIONS.**

13 **§9-5-8b. Authority of Investigations and Fraud Management Division**
14 **to subpoena witnesses and documents.**

15 (a) When the Investigations and Fraud Management Division of
16 the Office of the Inspector General, which is charged with
17 investigating welfare fraud and intra-agency employee misconduct,
18 has credible information that indicates a person has engaged in an
19 act or activity related to Department of Health and Human Resources
20 programs, benefits or intra-agency employee misconduct which is
21 subject to prosecution, it may conduct an investigation to
22 determine if the act has been committed. To the extent necessary to
23 the investigation, the secretary or an employee of the Office of
24 the Inspector General designated by the secretary may administer
25 oaths or affirmations and issue subpoenas for witnesses and

1 documents relevant to the investigation, including information
2 concerning the existence, description, nature, custody, condition
3 and location of any book, record, documents or other tangible thing
4 and the identity and location of persons having knowledge of
5 relevant facts or any matter reasonably calculated to lead to the
6 discovery of admissible evidence.

7 When the Investigations and Fraud Management Division has
8 probable cause to believe that a person has engaged in an act or
9 activity which is subject to prosecution relating to Department of
10 Health and Human Resources programs, benefits or intra-agency
11 employee misconduct, the secretary or an employee of the Office of
12 the Inspector General designated by the secretary may request
13 search warrants and present and swear or affirm criminal
14 complaints.

15 (b) If documents necessary to an investigation of the
16 Investigations and Fraud Management Division appear to be located
17 outside the state, the documents shall be made available by the
18 person or entity within the jurisdiction of the state having
19 control over such documents either at a convenient location within
20 the state or, upon payment of necessary expenses to the division
21 for transportation and inspection, at the place outside the state
22 where these documents are maintained.

23 (c) Upon failure of a person to comply with a subpoena or a
24 subpoena for the production of evidence or failure of a person to
25 give testimony without lawful excuse and upon reasonable notice to
26 all persons affected thereby, the Investigations and Fraud

1 Management Division may apply to the circuit court of the county in
2 which compliance is sought for appropriate orders to compel
3 obedience with the provisions of this section.

4 (d) The Investigations and Fraud Management Division may not
5 make public the name or identity of a person whose acts or conduct
6 is investigated pursuant to this section or the facts disclosed in
7 an investigation except as the same may be used in any legal action
8 or enforcement proceeding brought pursuant to this code or federal
9 law.

10 **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

11 **ARTICLE 4. FORGERY AND CRIMES AGAINST THE CURRENCY.**

12 **§61-4-9. Unauthorized use, transfer, acquisition, alteration or**
13 **possession of certain benefits.**

14 (a) For the purposes of this section:

15 (1) "Benefits" means any payment, allotments, money, goods or
16 other things of value granted pursuant to a benefit program;

17 (2) "Benefit access device" means any card, plate, account
18 number or other means of access that can be used, alone or in
19 conjunction with another access device, to obtain payments,
20 allotments, benefits, money, goods or other things of value that
21 can be used to initiate a transfer of funds;

22 (3) "Benefit program" includes the Federal Food Stamp Act,
23 Supplemental Nutritional Assistance Program, Temporary Assistance
24 to Needy Families or other similar state or federal financial
25 assistance program; and

1 (4) "Terms of the benefit program" includes all statutes,
2 rules, regulations or other requirements of that specific benefit
3 program for use of the benefits.

4 (b) Any person who knowingly uses, transfers, acquires, alters
5 or possesses benefits or one or more benefit access device contrary
6 to the terms of the benefit program shall:

7 (1) If the benefits are of a value of less than \$1,000, be
8 guilty of a misdemeanor and, upon conviction thereof, shall for a
9 first offense be fined not more than \$1,000 or confined in a
10 regional jail for not more than one year, or both fined and
11 confined, and for a second and any subsequent offense shall be
12 fined not more than \$1,000 or confined in a regional jail for not
13 less than thirty days and not more than one year;

14 (2) If the benefits are of a value of \$1,000 or more, but less
15 than \$5,000, be guilty of a felony and, upon conviction, shall for
16 a first offense be fined not more than \$10,000 or imprisoned in a
17 state correctional facility for not more than three years, or both
18 fined and imprisoned, and for a second and any subsequent offense
19 shall be fined not more than \$10,000 or imprisoned for not less
20 than six months nor more than five years, or both fined and
21 imprisoned; and

22 (3) If the benefits are of a value of \$5,000 or more, be
23 guilty of a felony and, upon conviction, fined not more than
24 \$250,000 or imprisoned in a state correctional facility for not
25 more than ten years, or both fined and imprisoned.

26 (c) Any person who presents, or causes to be presented,

1 benefits or one or more benefit access device for payment,
2 allotments, money, goods or other things of value knowing the same
3 to have been received, transferred or used in any manner in
4 violation of the terms of the benefit program is:

5 (1) If the benefits are of a value of less than \$1,000, guilty
6 of a misdemeanor and, upon conviction, shall for a first offense be
7 fined not more than \$1,000 or confined in a regional jail for not
8 more than one year, or both fined and confined, and for a second
9 and any subsequent conviction shall be fined not more than \$1,000
10 or confined in a regional jail for not less than thirty days and
11 not more than one year;

12 (2) If the benefits are of a value of \$1,000 or more, guilty
13 of a felony and, upon conviction, shall for a first offense be
14 fined not more than \$20,000 or imprisoned in a state correctional
15 facility for not more than five years, or both fined and
16 imprisoned, and for a second and any subsequent conviction shall be
17 fined not more than \$20,000 or imprisoned in a state correctional
18 facility for not less than one year nor more than five years, or
19 both fined and imprisoned.

20 (d) Notwithstanding the penalties contained in this section,
21 in the case of any individual convicted of an offense under this
22 section, the court may permit the individual to perform work
23 approved by the court, in lieu of confinement, for the purpose of
24 providing restitution for losses incurred by the United States and
25 the state agency as a result of the offense for which the
26 individual was convicted. If the court permits the individual to

1 perform work and the individual agrees, the court shall withhold
2 the imposition of the sentence on the condition that the individual
3 perform the assigned work. Upon the successful completion of the
4 assigned work the court shall waive any confinement from the
5 sentence.

6 (e) For purposes of this section, possession of two or more
7 benefit access devices without authorization is prima facie
8 evidence that an individual has knowledge the possession of the
9 benefit access devices is a violation of the terms of the benefit
10 program.

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