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WEST VIRGINIA LEGISLATURE

SEVENTY-EIGHTH LEGISLATURE

REGULAR SESSION, 2008

COMMITTEE SUBSTITUTE

FOR

ENROLLED

Senate Bill No. 286

(SENATORS PREZIOSO, BAILEY, EDGELL, FOSTER, HUNTER,
KESSLER, MINARD, UNGER, DEEM, GUILLS, YODER, LOVE,
McCABE, PLYMALE AND JENKINS, *original sponsors*)

[Passed March 6, 2008; in effect from passage.]

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SECRETARY OF STATE

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(SENATORS PREZIOSO, BAILEY, EDGELL, FOSTER, HUNTER,
KESSLER, MINARD, UNGER, DEEM, GUILLS, YODER, LOVE,
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[Passed March 6, 2008; in effect from passage.]

AN ACT to amend and reenact §9-6-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-6A-9 of said code, all relating to personal immunity from civil liability for adult protective services workers and child protective services workers performing employment-related duties and responsibilities within their official capacity.

Be it enacted by the Legislature of West Virginia:

That §9-6-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §49-6A-9 of said code be amended and reenacted, all to read as follows:

CHAPTER 9. HUMAN SERVICES.

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

§9-6-2. Adult protective services; immunity from civil liability; rules; organization and duties.

1 (a) There is hereby established and continued within
2 the Department of Health and Human Resources the
3 system of adult protective services heretofore existing.

4 (b) The secretary shall propose rules for legislative
5 approval in accordance with the provisions of article
6 three, chapter twenty-nine-a of this code regarding the
7 organization and duties of the adult protective services
8 system and the procedures to be used by the
9 department to effectuate the purposes of this article.
10 The rules may be amended and supplemented from time
11 to time.

12 (c) The secretary shall design and arrange such rules
13 to attain, or move toward the attainment, of the
14 following goals to the extent that the secretary believes
15 feasible under the provisions of this article within the
16 state appropriations and other funds available:

17 (1) Assisting adults who are abused, neglected or
18 incapacitated in achieving or maintaining
19 self-sufficiency and self-support and preventing,

20 reducing and eliminating their dependency on the state;

21 (2) Preventing, reducing and eliminating neglect and
22 abuse of adults who are unable to protect their own
23 interests;

24 (3) Preventing and reducing institutional care of
25 adults by providing less intensive forms of care,
26 preferably in the home;

27 (4) Referring and admitting abused, neglected or
28 incapacitated adults to institutional care only where
29 other available services are inappropriate;

30 (5) Providing services and monitoring to adults in
31 institutions designed to assist adults in returning to
32 community settings;

33 (6) Preventing, reducing and eliminating the
34 exploitation of incapacitated adults and facility
35 residents through the joint efforts of the various
36 agencies of the Department of Health and Human
37 Resources, the adult protective services system, the
38 state and regional long-term care ombudsmen,
39 administrators of nursing homes or other residential
40 facilities and county prosecutors;

41 (7) Preventing, reducing and eliminating abuse and
42 neglect of residents in nursing homes or facilities; and

43 (8) Coordinating investigation activities for
44 complaints of abuse and neglect of incapacitated adults
45 and facility residents among the various agencies of the
46 Department of Health and Human Resources, the adult
47 protective services system, the state and regional

48 long-term care ombudsmen, administrators of nursing
49 homes or other residential facilities, county prosecutors,
50 if necessary, and other state or federal agencies or
51 officials, as appropriate.

52 (d) No adult protective services caseworker may be
53 held personally liable for any professional decision or
54 action thereupon arrived at in the performance of his or
55 her official duties as set forth in this section or agency
56 rules promulgated thereupon: *Provided*, That nothing
57 in this subsection protects any adult protective services
58 worker from any liability arising from the operation of
59 a motor vehicle or for any loss caused by gross
60 negligence, willful and wanton misconduct or
61 intentional misconduct.

62 (e) The rules proposed by the secretary shall provide
63 for the means by which the department shall cooperate
64 with federal, state and other agencies to fulfill the
65 objectives of the system of adult protective services.

CHAPTER 49. CHILD WELFARE.

ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.

§49-6A-9. Establishment of child protective services; general duties and powers; immunity from civil liability; cooperation of other state agencies.

1 (a) The state department shall establish or designate
2 in every county a local child protective services office to
3 perform the duties and functions set forth in this
4 article.

5 (b) The local child protective services office shall

6 investigate all reports of child abuse or neglect:
7 *Provided*, That under no circumstances shall
8 investigating personnel be relatives of the accused, the
9 child or the families involved. In accordance with the
10 local plan for child protective services, it shall provide
11 protective services to prevent further abuse or neglect
12 of children and provide for or arrange for and
13 coordinate and monitor the provision of those services
14 necessary to ensure the safety of children. The local
15 child protective services office shall be organized to
16 maximize the continuity of responsibility, care and
17 service of individual workers for individual children
18 and families: *Provided, however*, That under no
19 circumstances may the secretary or his or her designee
20 promulgate rules or establish any policy which restricts
21 the scope or types of alleged abuse or neglect of minor
22 children which are to be investigated or the provision of
23 appropriate and available services.

24 Each local child protective services office shall:

25 (1) Receive or arrange for the receipt of all reports of
26 children known or suspected to be abused or neglected
27 on a 24-hour, seven-day-a-week basis and cross-file all
28 such reports under the names of the children, the family
29 and any person substantiated as being an abuser or
30 neglecter by investigation of the Department of Health
31 and Human Resources, with use of such cross-filing of
32 such person's name limited to the internal use of the
33 department;

34 (2) Provide or arrange for emergency children's
35 services to be available at all times;

36 (3) Upon notification of suspected child abuse or

37 neglect, commence or cause to be commenced a
38 thorough investigation of the report and the child's
39 environment. As a part of this response, within
40 fourteen days there shall be a face-to-face interview
41 with the child or children and the development of a
42 protection plan, if necessary for the safety or health of
43 the child, which may involve law-enforcement officers
44 or the court;

45 (4) Respond immediately to all allegations of
46 imminent danger to the physical well-being of the child
47 or of serious physical abuse. As a part of this response,
48 within seventy-two hours there shall be a face-to-face
49 interview with the child or children and the
50 development of a protection plan, which may involve
51 law-enforcement officers or the court; and

52 (5) In addition to any other requirements imposed by
53 this section, when any matter regarding child custody
54 is pending, the circuit court or family law master may
55 refer allegations of child abuse and neglect to the local
56 child protective services office for investigation of the
57 allegations as defined by this chapter and require the
58 local child protective services office to submit a written
59 report of the investigation to the referring circuit court
60 or family law master within the time frames set forth by
61 the circuit court or family law master.

62 (c) In those cases in which the local child protective
63 services office determines that the best interests of the
64 child require court action, the local child protective
65 services office shall initiate the appropriate legal
66 proceeding.

67 (d) The local child protective services office shall be

68 responsible for providing, directing or coordinating the
69 appropriate and timely delivery of services to any child
70 suspected or known to be abused or neglected,
71 including services to the child's family and those
72 responsible for the child's care.

73 (e) To carry out the purposes of this article, all
74 departments, boards, bureaus and other agencies of the
75 state or any of its political subdivisions and all agencies
76 providing services under the local child protective
77 services plan shall, upon request, provide to the local
78 child protective services office such assistance and
79 information as will enable it to fulfill its
80 responsibilities.

81 (f)(1) In order to obtain information regarding the
82 location of a child who is the subject of an allegation of
83 abuse or neglect, the Secretary of the Department of
84 Health and Human Resources may serve, by certified
85 mail or personal service, an administrative subpoena on
86 any corporation, partnership, business or organization
87 for the production of information leading to
88 determining the location of the child.

89 (2) In case of disobedience to the subpoena, in
90 compelling the production of documents, the secretary
91 may invoke the aid of: (A) The circuit court with
92 jurisdiction over the served party if the person served is
93 a resident; or (B) the circuit court of the county in
94 which the local child protective services office
95 conducting the investigation is located if the person
96 served is a nonresident.

97 (3) A circuit court shall not enforce an administrative
98 subpoena unless it finds that: (A) The investigation is

99 one the Division of Child Protective Services is
100 authorized to make and is being conducted pursuant to
101 a legitimate purpose; (B) the inquiry is relevant to that
102 purpose; (C) the inquiry is not too broad or indefinite;
103 (D) the information sought is not already in the
104 possession of the Division of Child Protective Services;
105 and (E) any administrative steps required by law have
106 been followed.

107 (4) If circumstances arise where the secretary, or his
108 or her designee, determines it necessary to compel an
109 individual to provide information regarding the
110 location of a child who is the subject of an allegation of
111 abuse or neglect, the secretary, or his or her designee,
112 may seek a subpoena from the circuit court with
113 jurisdiction over the individual from whom the
114 information is sought.

115 (g) No child protective services caseworker may be
116 held personally liable for any professional decision or
117 action thereupon arrived at in the performance of his or
118 her official duties as set forth in this section or agency
119 rules promulgated thereupon: *Provided*, That nothing
120 in this subsection protects any child protective services
121 worker from any liability arising from the operation of
122 a motor vehicle or for any loss caused by gross
123 negligence, willful and wanton misconduct or
124 intentional misconduct.

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

.....*Chandy White*.....
Chairman Senate Committee

.....*[Signature]*.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

.....*David E. Hulse*.....
Clerk of the Senate

.....*Gregory W. Sand*.....
Clerk of the House of Delegates

.....*Carl Ray Tomblin*.....
President of the Senate

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

The within *as appended* this
the *20th* Day of *March*, 2008.

.....*[Signature]*.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 14 2008

Time 11:25 AM