

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 395**

4 (By Senator Palumbo)

5 _____
6 [Originating in the Committee on Health and Human Resources;
7 reported January 29, 2014.]

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

1 providing an alternative to confinement for individuals
2 convicted of the offenses associated with unlawful use of
3 certain benefits.

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

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

9 **CHAPTER 9. HUMAN SERVICES.**

10 **ARTICLE 5. MISCELLANEOUS PROVISIONS.**

11 **§9-5-8b. Authority of Investigations and Fraud Management Division**
12 **to subpoena witnesses and documents.**

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

1 any book, record, documents or other tangible thing and the
2 identity and location of persons having knowledge of relevant facts
3 or any matter reasonably calculated to lead to the discovery of
4 admissible evidence.

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

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

20 (c) Upon failure of a person to comply with a subpoena or a
21 subpoena for the production of evidence or failure of a person to
22 give testimony without lawful excuse and upon reasonable notice to
23 all persons affected thereby, the Investigations and Fraud
24 Management Division may apply to the circuit court of the county in
25 which compliance is sought for appropriate orders to compel
26 obedience with the provisions of this section.

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

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

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

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

11 (a) For the purposes of this section:

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

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

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

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

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

4 (1) If the benefits are of a value of less than \$100, be
5 guilty of a misdemeanor and, upon conviction thereof, shall for a
6 first offense be fined not more than \$1,000 or confined in a
7 regional jail for not more than one year, or both fined and
8 confined, and for a second and any subsequent offense shall be
9 fined not more than \$1,000 or confined in a regional jail for not
10 less than thirty days and not more than one year;

11 (2) If the benefits are of a value of \$100 or more, but less
12 than \$5,000, be guilty of a felony and, upon conviction, shall for
13 a first offense be fined not more than \$10,000 or imprisoned in a
14 state correctional facility for not more than three years, or both
15 fined and imprisoned, and for a second and any subsequent offense
16 shall be fined not more than \$10,000 or imprisoned for not less
17 than six months nor more than five years, or both fined and
18 imprisoned; and

19 (3) If the benefits are of a value of \$5,000 or more, be
20 guilty of a felony and, upon conviction, fined not more than
21 \$250,000 or imprisoned in a state correctional facility for not
22 more than ten years, or both fined and imprisoned.

23 (c) Any person who presents, or causes to be presented,
24 benefits or one or more benefit access device for payment,
25 allotments, money, goods or other things of value knowing the same
26 to have been received, transferred or used in any manner in

1 violation of the terms of the benefit program is:

2 (1) If the benefits are of a value of less than \$100, guilty
3 of a misdemeanor and, upon conviction, shall for a first offense be
4 fined not more than \$1,000 or confined in a regional jail for not
5 more than one year, or both fined and confined, and for a second
6 and any subsequent conviction shall be fined not more than \$1,000
7 or confined in a regional jail for not less than thirty days and
8 not more than one year;

9 (2) If the benefits are of a value of \$100 or more, guilty of
10 a felony and, upon conviction, shall for a first offense be fined
11 not more than \$20,000 or imprisoned in a state correctional
12 facility for not more than five years, or both fined and
13 imprisoned, and for a second and any subsequent conviction shall be
14 fined not more than \$20,000 or imprisoned in a state correctional
15 facility for not less than one year nor more than five years, or
16 both fined and imprisoned.

17 (d) Notwithstanding the penalties contained in this section,
18 in the case of any individual convicted of an offense under this
19 section, the court may permit the individual to perform work
20 approved by the court, in lieu of confinement, for the purpose of
21 providing restitution for losses incurred by the United States and
22 the state agency as a result of the offense for which the
23 individual was convicted. If the court permits the individual to
24 perform work and the individual agrees, the court shall withhold
25 the imposition of the sentence on the condition that the individual
26 perform the assigned work. Upon the successful completion of the

1 assigned work the court shall waive any confinement from the
2 sentence.

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

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