

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

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5 FOR

6 **Senate Bill No. 395**

7 (SENATOR PALUMBO, *original sponsor*)

8 _____
9 [Passed March 8, 2014; in effect ninety days from passage.]
10 _____

11
12 AN ACT 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;
3 providing an alternative to confinement for individuals
4 convicted of the offenses associated with unlawful use of
5 certain benefits; and precluding certain prosecution under
6 multiple sections for conduct arising out of the same
7 transaction or occurrence.

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

9 That the Code of West Virginia, 1931, as amended, be amended
10 by adding thereto a new section, designated §9-5-8b; and that said
11 code be amended by adding thereto a new section, designated
12 §61-4-9, all to read as follows:

13 **CHAPTER 9. HUMAN SERVICES.**

14 **ARTICLE 5. MISCELLANEOUS PROVISIONS.**

15 **§9-5-8b. Authority of Investigations and Fraud Management Division**
16 **to subpoena witnesses and documents.**

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

1 the Inspector General designated by the secretary may administer
2 oaths or affirmations and issue subpoenas for witnesses and
3 documents relevant to the investigation, including information
4 concerning the existence, description, nature, custody, condition
5 and location of any book, record, documents or other tangible thing
6 and the identity and location of persons having knowledge of
7 relevant facts or any matter reasonably calculated to lead to the
8 discovery of admissible evidence.

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

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

25 (c) Upon failure of a person to comply with a subpoena or a
26 subpoena for the production of evidence or failure of a person to

1 give testimony without lawful excuse and upon reasonable notice to
2 all persons affected thereby, the Investigations and Fraud
3 Management Division may apply to the circuit court of the county in
4 which compliance is sought for appropriate orders to compel
5 obedience with the provisions of this section.

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

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

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

14 **§61-4-9. Unauthorized use, transfer, acquisition, alteration or**
15 **possession of certain benefits.**

16 (a) For the purposes of this section:

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

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

24 (3) "Benefit program" includes the Federal Food Stamp Act,
25 Supplemental Nutritional Assistance Program, Temporary Assistance

1 to Needy Families or other similar state or federal financial
2 assistance program; and

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

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

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

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

24 (3) If the benefits are of a value of \$5,000 or more, be
25 guilty of a felony and, upon conviction, fined not more than
26 \$250,000 or imprisoned in a state correctional facility for not

1 more than ten years, or both fined and imprisoned.

2 (c) Any person who presents, or causes to be presented,
3 benefits or one or more benefit access device for payment,
4 allotments, money, goods or other things of value knowing the same
5 to have been received, transferred or used in any manner in
6 violation of the terms of the benefit program is:

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

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

22 (d) Notwithstanding the penalties contained in this section,
23 in the case of any individual convicted of an offense under this
24 section, the court may permit the individual to perform work
25 approved by the court, in lieu of confinement, for the purpose of
26 providing restitution for losses incurred by the United States and

1 the state agency as a result of the offense for which the
2 individual was convicted. If the court permits the individual to
3 perform work and the individual agrees, the court shall withhold
4 the imposition of the sentence on the condition that the individual
5 perform the assigned work. Upon the successful completion of the
6 assigned work the court shall waive any confinement from the
7 sentence.

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

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

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