

Senate Bill No. 395

(By Senator Palumbo)

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[Introduced January 21, 2014; referred to the Committee on Health and Human Resources; and then to the Committee on the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §9-5-8b and §9-5-22; to amend and reenact §9-9-6 of said code; and to amend said code by adding thereto a new section, designated §61-4-9, all relating to the operation and oversight of certain benefit programs; granting certain subpoena power to the Investigations and Fraud Management Division to investigate welfare fraud; authorizing the Investigations and Fraud Management Division to request search warrants, swear to complaints and seek relevant orders from circuit court in certain situations; providing access to out-of-state documents in certain circumstances; prohibiting disclosure of persons under investigation by the Investigations and Fraud Management Division; opting out of a federal statute that would otherwise not allow a state resident who has been convicted of a felony

1 involving a controlled substance from receiving certain
2 benefits; requiring the Department of Health and Human
3 Resources to seek a waiver of federal law to implement a
4 prohibition on the purchase of certain items with certain
5 benefits; requiring the Department of Health and Human
6 Resources to seek a waiver of federal regulations to implement
7 an incentive program for the purchase of certain fresh fruits,
8 vegetables and meats; defining terms; creating misdemeanor and
9 felony offenses for certain unlawful use of certain benefits
10 or benefit access devices; stating certain presumptions and
11 calculations permissible in prosecution of these offenses; and
12 providing an alternative to confinement for individuals
13 convicted of the offenses associated with unlawful use of
14 certain benefits.

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

16 That the Code of West Virginia, 1931, as amended, be amended
17 by adding thereto two new sections, designated §9-5-8b and §9-5-22;
18 that §9-9-6 of said code be amended and reenacted; and that said
19 code be amended by adding thereto a new section, designated
20 §61-4-9, all to read as follows:

21 **CHAPTER 9. HUMAN SERVICES.**

22 **ARTICLE 5. MISCELLANEOUS PROVISIONS.**

23 **§9-5-8b. Authority of Investigations and Fraud Management Division**

1 **to subpoena witnesses and documents.**

2 (a) When the Investigations and Fraud Management Division of
3 the Office of the Inspector General, which is charged with
4 investigating welfare fraud and employee misconduct, has credible
5 information that indicates a person has engaged in an act or
6 activity related to Department of Health and Human Resources
7 programs, benefits or employee misconduct which is subject to
8 prosecution, it may conduct an investigation to determine if the
9 act has been committed. To the extent necessary to the
10 investigation, the secretary or an employee of the Office of the
11 Inspector General designated by the secretary, may administer oaths
12 or affirmations and issue subpoenas for witnesses and documents
13 relevant to the investigation, including information concerning the
14 existence, description, nature, custody, condition and location of
15 any book, record, documents or other tangible thing and the
16 identity and location of persons having knowledge of relevant facts
17 or any matter reasonably calculated to lead to the discovery of
18 admissible evidence.

19 When the Investigations and Fraud Management Division has
20 probable cause to believe that a person has engaged in an act or
21 activity which is subject to prosecution relating to Department of
22 Health and Human Resources programs, benefits or employee
23 misconduct, the secretary or an employee of the Office of the
24 Inspector General designated by the secretary, may request search

1 warrants and present and swear or affirm criminal complaints.

2 (b) If documents necessary to an investigation of the
3 Investigations and Fraud Management Division appear to be located
4 outside the state, the documents shall be made available by the
5 person or entity within the jurisdiction of the state having
6 control over such documents either at a convenient location within
7 the state or, upon payment of necessary expenses to the division
8 for transportation and inspection, at the place outside the state
9 where these documents are maintained.

10 (c) Upon failure of a person to comply with a subpoena or a
11 subpoena for the production of evidence or failure of a person to
12 give testimony without lawful excuse and upon reasonable notice to
13 all persons affected thereby, the Investigations and Fraud
14 Management Division may apply to the circuit court of the county in
15 which compliance is sought for appropriate orders to compel
16 obedience with the provisions of this section.

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

23 **§9-5-22. Supplemental Nutritional Assistance Program.**

24 (a) On or before October 1, 2014, the Department of Health and

1 Human Resources shall submit a demonstration waiver request to the
2 United States Department of Agriculture Food and Nutrition Service,
3 pursuant to section 17 of the Food and Nutrition Act of 2008 (7
4 U.S.C. Section 2026), seeking to prohibit the use of Supplemental
5 Nutrition Assistance Program benefits for the purchase of specific
6 items that have no nutritional value, including soda.

7 (b) On or before October 1, 2014, the Department of Health and
8 Human Resources shall submit a request to the United States
9 Department of Agriculture Food and Nutrition Service seeking a
10 waiver of the federal regulations contained in 7 C.F.R. §278.2(b),
11 in order to provide incentives for the use of Supplemental
12 Nutrition Assistance Program benefits for the purchase of fresh
13 fruits, vegetables and meat from farmer's markets or grocery
14 stores. In creating the request and proposing the incentives, the
15 Department of Health and Human Resources shall review the results
16 of the United States Department of Agriculture Food and Nutrition
17 Service's Healthy Incentives Pilot, completed on December 31, 2012.

18 (c) Pursuant to the authorization provided to the states under
19 section 115(d)(1)(A) of the Personal Responsibility and Work
20 Opportunity Reconciliation Act of 1996 (21 U.S.C. Section
21 862a(d)(1)(A)), West Virginia elects to exempt all persons
22 domiciled in the state from application of section 115(a) of the
23 Personal Responsibility and Work Opportunity Reconciliation Act of
24 1996 (21 U.S.C. Section 862a(a)).

1 **ARTICLE 9. WV WORKS ACT.**

2 **§9-9-6. Program participation.**

3 (a) Unless otherwise noted in this article, all adult
4 beneficiaries of cash assistance and work eligible individuals
5 shall participate in the West Virginia Works Program in accordance
6 with the provisions of this article. The level of participation,
7 services to be delivered and work requirements ~~shall be~~ is defined
8 through legislative rules established by the secretary.

9 (b) Any individual exempt under the provisions of section
10 eight of this article may participate in the activities and
11 programs offered through the West Virginia Works Program.

12 (c) Support services other than cash assistance through the
13 West Virginia Works Program may be provided to at-risk families to
14 assist in meeting the work requirements or to eliminate the need
15 for cash assistance.

16 (d) Cash assistance through the West Virginia Works Program
17 may be provided to an at-risk family if the combined family income,
18 as defined in section three of this article, is below the income
19 test levels established by the department, subject to the
20 following:

21 (1) Any adult member of an at-risk family who receives
22 supplemental security income ~~shall be~~ is excluded from the benefit
23 group;

24 (2) Within the limits of funds appropriated therefor, an

1 at-risk family that includes a married man and woman and dependent
2 children of either one or both may receive an additional cash
3 assistance benefit in an amount of \$100 or less; and

4 (3) An at-risk family shall receive an additional cash
5 assistance benefit in the amount of \$25 regardless of the amount of
6 child support collected in a month on behalf of a child or children
7 of the at-risk family, as allowed by federal law.

8 (e) Pursuant to the authorization provided to the states under
9 section 115(d)(1)(A) of the Personal Responsibility and Work
10 Opportunity Reconciliation Act of 1996 (Public Law 104-193, 21
11 U.S.C. Section 862a(d)(1)(A)), West Virginia elects to exempt all
12 persons domiciled in the state from application of section 115(a)
13 of the Personal Responsibility and Work Opportunity Reconciliation
14 Act of 1996 (21 U.S.C. Section 862a(a)).

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

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

17 **§61-4-9. Unauthorized use, transfer, acquisition, alteration or**
18 **possession of certain benefits.**

19 (a) For the purposes of this section:

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

22 (2) "Benefit access device" means any card, plate, account
23 number or other means of access that can be used, alone or in

1 conjunction with another access device, to obtain payments,
2 allotments, benefits, money, goods or other things of value, that
3 can be used to initiate a transfer of funds;

4 (3) "Benefit program" includes the Federal Food Stamp Act,
5 Supplemental Nutritional Assistance Program, Temporary Assistance
6 to Needy Families, or other similar state or federal financial
7 assistance program; and

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

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

14 (1) If the benefits are of a value of less than \$100, be
15 guilty of a misdemeanor and, upon conviction thereof, shall for a
16 first offense be fined not more than \$1,000 or confined in a
17 regional jail for not more than one year, or both fined and
18 confined, and for a second and any subsequent offense shall be
19 fined not more than \$1,000 or confined in a regional jail for not
20 less than thirty days and not more than one year;

21 (2) If the benefits are of a value of \$100 or more, but less
22 than \$5,000, be guilty of a felony and, upon conviction, shall for
23 a first offense be fined not more than \$10,000 or imprisoned in a
24 state correctional facility for not more than three years, or both

1 fined and imprisoned, and for a second and any subsequent offense
2 shall be fined not more than \$10,000 or imprisoned for not less
3 than six months nor more than five years, or both fined and
4 imprisoned; and

5 (3) If the benefits are of a value of \$5,000 or more, be
6 guilty of a felony and, upon conviction, fined not more than
7 \$250,000 or imprisoned in a state correctional facility for not
8 more than ten years, or both fined and imprisoned.

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

14 (1) If the benefits are of a value of less than \$100, guilty
15 of a misdemeanor and, upon conviction, shall for a first offense be
16 fined not more than \$1,000 or confined in a regional jail for not
17 more than one year, or both fined and confined, and for a second
18 and any subsequent conviction shall be fined not more than \$1,000
19 or confined in a regional jail for not less than thirty days and
20 not more than one year;

21 (2) If the benefits are of a value of \$100 or more, guilty of
22 a felony and, upon conviction, shall for a first offense be fined
23 not more than \$20,000 or imprisoned in a state correctional
24 facility for not more than five years, or both fined and

1 imprisoned, and for a second and any subsequent conviction shall be
2 fined not more than \$20,000 or imprisoned in a state correctional
3 facility for not less than one year nor more than five years, or
4 both fined and imprisoned.

5 (d) Notwithstanding the penalties contained in this section,
6 in the case of any individual convicted of an offense under this
7 section, the court may permit the individual to perform work
8 approved by the court, in lieu of confinement, for the purpose of
9 providing restitution for losses incurred by the United States and
10 the state agency as a result of the offense for which the
11 individual was convicted. If the court permits the individual to
12 perform work and the individual agrees, the court shall withhold
13 the imposition of the sentence on the condition that the individual
14 perform the assigned work. Upon the successful completion of the
15 assigned work the court shall waive any confinement from the
16 sentence.

17 (e) For purposes of this section, possession of two or more
18 benefit access devices without authorization is prima facie
19 evidence that an individual has knowledge the possession of the
20 benefit access devices is a violation of the terms of the benefit
21 program.

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

NOTE: The purpose of this bill is to make benefits programs run more effectively by removing barriers to participation, increasing the power of the Investigations and Fraud Management Division to investigate welfare fraud, require DHHR to request the ability to prohibit the use of benefits for certain unhealthy foods and incentivize the use of benefits for certain healthy foods, and create state criminal penalties for knowingly misusing benefits in order to permit state prosecution for certain violators rather than relying solely on federal prosecution.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§9-5-8b, §9-5-22 and §61-4-9 are new; therefore, strike-throughs and underscoring have been omitted.