WEST VIRGINIA CODE CHAPTER 48 ARTICLE 28A

WV Legislature

§48-28A-101. Purpose.

The Legislature finds that persons attempting to escape from actual or threatened domestic violence, sexual assault, or stalking frequently find it necessary to establish a new address in order to prevent their assailants or probable assailants from finding them. The purpose of this article is to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic abuse, sexual assault, or stalking; to enable interagency cooperation with the Secretary of State in providing address confidentiality for victims of domestic abuse, sexual assault, or stalking; and to enable state and local agencies to accept an address designated by the Secretary of State by a program participant as a substitute for a residential or mailing address.

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§48-28A-102. Definitions.

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

(1) "Application assistant" means an employee of a state or local agency, or of a nonprofit program that provides counseling, referral, shelter or other specialized service to victims of domestic abuse, rape, sexual assault or stalking, and who has been designated by the respective agency or nonprofit program, and trained, accepted and registered by the Secretary of State to assist individuals in the completion of program participation applications.

(2) "Designated address" means the address assigned to a program participant by the Secretary of State pursuant to section one hundred three of this article.

(3) "Mailing address" means an address that is recognized for delivery by the United States Postal Service.

(4) "Program" means the Address Confidentiality Program established by this article.

(5) "Program participant" means a person certified by the Secretary of State to participate in the program.

(6) "Residential Address" means a residential street, school or work address of an individual, as specified on the individual's application to be a program participant under this article.

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§48-28A-103. Address Confidentiality Program.

(a) On or after the effective date of the enactment of this article, the Secretary of State shall create an Address Confidentiality Program to be staffed by full time employees who have been subjected to a criminal history records search.

(b) Upon recommendation of an application assistant, an adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person may apply to the Secretary of State to have a designated address assigned by the Secretary of State.

(c) The Secretary of State may approve an application only if it is filed with the office of the Secretary of State in the manner established by rule and on a form prescribed by the Secretary of State. A completed application must contain the following information:

(1) The application preparation date, the applicant's signature and the signature and registration number of the application assistant who assisted the applicant in applying to be a program participant;

(2) A designation of the Secretary of State as agent for purposes of service of process and for receipt of certain first-class mail;

(3) The mailing address where the applicant may be contacted by the Secretary of State or a designee and the telephone number or numbers where the applicant may be contacted by the Secretary of State or the Secretary of State's designee; and

(4) A residential or mailing address or both types of addresses that the applicant requests not be disclosed for the reason that disclosure will jeopardize the applicant's safety or increase the risk of violence to the applicant or members of the applicant's household.

(d) Upon receipt of a properly completed application, the Secretary of State may certify the applicant as a program participant. A program participant is certified for a period of four years following the date of initial certification unless the certification is withdrawn or invalidated before that date. The Secretary of State shall send notification of a lapsing certification and a reapplication form to a program participant at least four weeks prior to the expiration of the program participant's certification.

(e) The Secretary of State shall forward to the program participant first-class mail received at the program participant's designated address.

(f)(1) An applicant may not file an application knowing that it:

(A) Contains false or incorrect information; or

(B) Falsely claims that disclosure of either the applicant's residential or mailing address or both types of addresses threatens the safety of the applicant or the applicant's children or

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the minor or incapacitated person on whose behalf the application is made.

(2) An application assistant may not assist or participate in the filing of an application that the application assistant knows:

(A) Contains false or incorrect information; or

(B) Falsely claims that disclosure of either the applicant's residential or mailing address or both types of addresses threatens the safety of the applicant or the applicant's children or the minor or incapacitated person on whose behalf the application is made.

(g) A person who violates the provisions of subsection (f) of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not more than one year.

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§48-28A-104. Cancellation.

Certification for the program may be canceled if one or more of the following conditions apply:

(1) If the program participant obtains a name change, unless the program participant provides the Secretary of State with documentation of a legal name change within ten business days of the name change;

(2) If there is a change in the residential address of the program participant from the one listed on the application, unless the program participant provides the Secretary of State with notice of the change in a manner prescribed by the Secretary of State; or

(3) The applicant or program participant violates subsection (f), section one hundred three of this article.

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§48-28A-105. Use of designated address.

(a) Upon demonstration of a program participant's certification in the program, state and local agencies and the courts of this state shall accept the designated address as a program participant's address for the purposes of creating a new public record unless the Secretary of State has determined that:

(1) The agency or court has a bona fide statutory or administrative requirement for the use of the program participant's residential or mailing address, such that the agency or court is unable to fulfill its statutory duties and obligations without the program participant's residential or mailing address; and

(2) The program participant's residential or mailing address will be used only for those statutory and administrative purposes, and shall be kept confidential, subject to the confidentiality provisions of section one hundred eight of this article.

(b) Notwithstanding the provisions of subsection (a) and upon the request of the Secretary of State, the Division of Motor Vehicles shall use the designated address for the purposes of issuing a driver's license or identification card: Provided, That the Division of Motor Vehicles shall not be prohibited from collecting and retaining a program participant's residential or mailing address or both addresses to be used only for statutory and administrative purposes. Any residential or mailing address of a program participant collected and retained pursuant to this subsection shall be kept confidential, subject to the provisions of section one hundred eight of this article.

(c) A designated address may be a post office box and may be used by a participant for voter registration purposes, as long as the Secretary of State has on file for the participant a residential and mailing address, as provided in section one hundred three of this article.

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§48-28A-106. Disclosure to law enforcement and state agencies.

(a) The Secretary of State may make a program participant's residential or mailing address available for inspection or copying, under the following circumstances:

(1) Upon request of a law enforcement agency in the manner provided for by rule; or

(2) Upon request of the head of a state agency or designee in the manner provided for by rule and upon a showing of a bona fide statutory or administrative requirement for the use of the program participant's residential or mailing address, such that the agency head or designee is unable to fulfill statutory duties and obligations without the program participant's residential or mailing address.

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§48-28A-107. Disclosure pursuant to court order or canceled certification.

(a) The Secretary of State shall make a program participant's residential or mailing address or both addresses available for inspection or copying to a person identified in a court order, upon receipt of a certified court order that specifically requires the disclosure of a particular program participant's residential or mailing address or both addresses and the reasons for the disclosure; or

(b) The Secretary of State may make a program participant's residential or mailing address both addresses available for inspection or copying if the program applicant or participant's certification has been canceled because the applicant or program participant has violated subsection (f), section one hundred three of this article.

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§48-28A-108. Confidentiality.

A program participant's application and supporting materials are not a public record and shall be kept confidential by the Secretary of State. Any employee of any agency or court who willfully breaches the confidentiality of these records or willfully discloses the name, residential or mailing address both addresses of a program participant in violation of the provisions of this article, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $1,000 or confined in jail not more than one year, or both fined and confined.

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§48-28A-109. Secretary of state; liability.

This article creates no liability upon the Secretary of State for any transaction compromised by any illegal act or inappropriate uses associated with this article.

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§48-28A-110. Rules.

The Secretary of State is hereby directed to propose legislative rules and emergency rules implementing the provisions of this article in accordance with the provisions of article three, chapter twenty-nine-a of this code.

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