WEST VIRGINIA CODE CHAPTER 5A ARTICLE 8

WV Legislature

§5A-8-1. Short title.

This article shall be known as the "Records Management and Preservation of Essential Records Act."

WV Legislature

§5A-8-2. Declaration of policy.

The Legislature declares that programs for the efficient and economical management of state and local records will promote economy and efficiency in the day-to-day record-keeping activities of state and local government and will facilitate and expedite government operations; that records containing information essential to the operation of government and to the protection of the rights and interests of persons must be protected against the destructive effects of all forms of disaster and must be available when needed. It is necessary, therefore, to adopt special provisions for the selection and preservation of essential state and local records thereby providing for the protection and availability of such information.

WV Legislature

§5A-8-3. Definitions.

As used in this article:

“Agency” means any department, office, commission, board, or other unit, however designated, of the executive branch of state government.

“Agency Records Manager” means an employee appointed by the agency’s chief executive officer or agency head to manage the agency’s records inventory and to act as liaison with the administrator.

“Disaster” means any occurrence of fire, flood, storm, earthquake, explosion, epidemic, riot, sabotage, or other condition of extreme peril resulting in substantial damage or injury to persons or property within this state, whether such occurrence is caused by an act of God, nature, or man, including an enemy of the United States.

“Local record” means a record of a county, city, town, authority, or any public corporation or political entity whether organized and existing under charter or under general law unless the record is designated or treated as a state record under state law.

“Preservation duplicate” means a copy of an essential state record which is used for the purpose of preserving such state record pursuant to this article.

“Record” means document, electronic file, book, paper, photograph, sound recording, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official state government business. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included within the definition of records as used in this article.

“State record” means:

(A) A record of a department, office, commission, board, spending unit, or other agency, however designated, of the state government.

(B) A record of the State Legislature.

(C) A record of any court of record, whether of statewide or local jurisdiction.

(D) Any record designated or treated as a state record under state law.

www.legislature

§5A-8-3a.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5A-8-4. Categories of records to be preserved.

State or local records which are within the following categories are essential records which shall be preserved pursuant to this article:

Category A. Records containing information necessary to the operation of government in the emergency created by a disaster.

Category B. Records not within category A but containing information necessary to protect the rights and interest of persons or to establish and affirm the powers and duties of governments in the resumption of operations after a disaster.

Category C. Records with historical value justifying permanent retention.

WV Legislature

§5A-8-5. State records administrator.

The Secretary of the Department of Administration is hereby designated the state records administrator, hereinafter called the administrator. The secretary may designate someone within the department to carry out the duties of the administrator. The administrator shall establish and administer in the Department of Administration of the executive branch of state government a records management program, which will apply efficient and economical management methods to the creation, utilization, maintenance, and retention, preservation, and disposal of state records; and shall establish and maintain a program for the selection and preservation of essential state records and shall advise and assist in the establishment of programs for the selection and preservation of essential local records.

WV Legislature

§5A-8-6. Records management and preservation advisory committee.

[Repealed.]

WV Legislature

§5A-8-7. Duties of administrator.

The administrator shall, with due regard for the functions of the agencies concerned:

(a) Establish standards, procedures, and techniques for effective management of records;

(b) Make continuing surveys of document operations and recommend improvements in current records management practices including the use of space, technology, equipment, and supplies employed in creating, maintaining, storing, and servicing records;

(c) Establish standards for the preparation of schedules providing for the retention of state records of continuing value and for the prompt and orderly disposal of state records no longer possessing sufficient administrative, legal, or fiscal value to warrant storage;

(d) Solicit input from agencies on essential records and data classification of information contained in the records. In accordance with the rules and regulations promulgated by the administrator, each agency that has custody or control of state records shall: (1) Inventory the state records in his or her custody or control; (2) submit to the administrator a report thereon containing such information as the administrator directs and containing recommendations as to which state records are essential; and (3) periodically review his or her inventory and his or her report and, if necessary, revise the report so that it is current, accurate, and complete; and

(e) Obtain reports from agencies as are required for the administration of the program.

WV Legislature

§5A-8-8. Rules and regulations.

The administrator shall promulgate such rules and regulations concerning the management and selection and preservation of essential state records as are necessary or proper to effectuate the purpose of this article.

WV Legislature

§5A-8-9. Duties of agency heads.

The head of each agency shall:

(a) Establish and maintain an active, continuing program for the economical and efficient management of the records of the agency;

(b) Designate and notify the administrator of an agency records manager to act as a point of contact between the administrator and the agency on issues related to management of the state records within the agency's control or custody;

(c) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities;

(d) Submit to the administrator, in accordance with the standards established by him or her, schedules proposing the length of time each state record series warrants retention for administrative, legal, or fiscal purposes after it has been received by the agency. Each agency records manager also shall submit lists of state records in custody of the agency that are not needed in the transaction of current business and that do not have sufficient administrative, legal, or fiscal value to warrant storage for disposal in conformity with the requirements of §5A-8-10 of this code;

(e) Designate those records of the agency that are essential state records, at least annually, and report the designated essential state records to the administrator;

(f) Provide for the preservation and safekeeping of essential state records in an appropriate manner;

(g) Cooperate with the administrator in the conduct of surveys made pursuant to the provisions of this article;

(h) Comply with the rules, regulations, standards, and procedures issued by the administrator; and

(i) First obtain the administrator's written approval before purchasing or acquiring any equipment, technology, or supplies used or to be used to store or preserve records of the agency.

WV Legislature

§5A-8-10. Essential state records – Preservation duplicates.

(a) The agency head may make or cause to be made preservation duplicates or may designate as preservation duplicates existing copies of essential state records. A preservation duplicate shall be durable, accurate, complete, and clear, and a preservation duplicate made by means of photography, microphotography, photocopying, film, microfilm, electronic file, or digital image stored on unalterable media shall be made in conformity with the standards prescribed therefor by the administrator.

(b) A preservation duplicate made by a photographic, photostatic, microfilm, microcard, miniature photographic, electronic file, digital image, or other process which accurately reproduces or forms a durable and unalterable medium for so reproducing the original, shall have the same force and effect for all purposes as the original record whether the original record is in existence or not. A transcript, exemplification, or certified copy of such preservation duplicate shall be deemed for all purposes to be a transcript, exemplification, or certified copy of the original record.

WV Legislature

§5A-8-11. Essential state records – Safekeeping.

(a) The administrator shall prescribe a manner of safekeeping of essential state records and preservation duplicates and may establish, with the approval of the Legislature, storage facilities therefor. The administrator may provide for physical storage outside the state or electronic storage.

(b) When in the opinion of the administrator the legally designated or customary location of an essential state record is such that the essential state record may be destroyed or unavailable in the event of a disaster:

(1) The agency with custody of the essential state record shall store a preservation duplicate at another location and permit such state record to remain at its legally designated or customary location; or

(2) The agency shall store such state record at a location other than its legally designated or customary location and deposit at the legally designated or customary location a preservation duplicate for use in lieu of the state record; or

(3) The agency may store such state record at a location other than its legally designated or customary location, without providing for a preservation duplicate, upon a determination that it is impracticable to provide for a preservation duplicate and that the state record is not frequently used. Such determination shall be made by the administrator and the regularly designated custodian of such state record, but if they disagree the determination shall be made by the administrator.

(c) The requirements of subsection (b) of this section shall not prohibit the administrator from removing an essential state record or preservation duplicate from the legally designated or customary location of the state record if a disaster has occurred or is imminent.

WV Legislature

§5A-8-12. Essential state records – Maintenance, inspection, and use.

[Repealed.]

WV Legislature

§5A-8-13. Essential state records – Confidential records.

Any agency subject to this article shall control and at all times be the owner of its records. When a state record is required by law to be treated in a confidential manner and is an essential state record, the agency, in effectuating the purpose of this article with respect to such state record, shall protect its confidential nature.

WV Legislature

§5A-8-14. Essential state records – Review of program.

The administrator shall review the program at least annually for the selection and preservation of essential state records designated by the agencies, including the classification of records and the provisions for preservation duplicates, and for safekeeping of essential state records or preservation duplicates to ensure that the purposes of this article are accomplished.

WV Legislature

§5A-8-15. Records management and preservation of county records; alternate storage of county records; Records Management and Preservation Board; qualifications and appointment of members; reimbursement of expenses; staffing; rule-making authority; study of records management needs of state agencies; grants to counties.

The Legislature finds that the use of electronic technology and other procedures to manage and preserve public records by counties should be uniform throughout the state where possible.

(a) The governing body and the chief elected official of a county, hereinafter referred to as a county government entity, whether organized and existing under a charter or under general law, shall promote the principles of efficient records management and preservation of local records. A county governing entity may, as far as practical, follow the program established for the uniform management and preservation of county records as set out in rules proposed for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code as proposed by the Records Management and Preservation Board.

(b) In the event a county government entity decides to destroy or otherwise dispose of a county record, the county government entity may, prior to destruction or disposal thereof, offer the record to the director of Archives and History within the Department of Arts, Culture, and History for preservation of the record as a document of historical value. Unless authorized by the Supreme Court of Appeals, the records of courts of record and magistrate courts are not affected by the provisions of this section.

(c)(1) A preservation duplicate of a county government entity record may be stored in any format approved by the board in which the image of the original record is preserved in a form, including electronic file, in which the image is incapable of erasure or alteration and from which a reproduction of the stored record may be retrieved that truly and accurately depicts the image of the original county government record.

(2) Except for those formats, processes, and systems used for the storage of records on the effective date of this section, no alternate format for the storage of county government entity records described in this section is authorized for the storage of county government entity records unless the particular format has been approved pursuant to a legislative rule promulgated by the board in accordance with the provisions of Chapter 29A of this code. The board may prohibit the use of any format, process, or system used for the storage of records upon its determination that the same is not reasonably adequate to preserve the records from destruction, alteration, or decay.

(3) Upon creation of a preservation duplicate that stores an original county government entity record in an approved format that is incapable of erasure or alteration and that may be retrieved in a format that truly and accurately depicts the image of the original record, the county government entity may destroy or otherwise dispose of the original in accordance with the provisions of §57-1-7c of this code.

WV Legislature

(d) A Records Management and Preservation Board for county government entities is continued, to be composed of 11 members.

(1) Three members shall serve ex officio. One member shall be the curator of the Department of Arts, Culture, and History or designee who shall be the chair of the board. One member shall be the Administrator of the Supreme Court of Appeals or designee. One member shall be the Chief Technology Officer or designee.

(2) The Governor shall appoint eight members of the board, with the advice and consent of the Senate. Not more than five appointments to the board may be from the same political party and four members shall be appointed from each congressional district. Of the eight members appointed by the Governor:

(i) Five appointments shall be county elected officials, one of whom shall be a clerk of a county commission, one of whom shall be a circuit court clerk, one of whom shall be a county commissioner, one of whom shall be a county sheriff, and one of whom shall be a county assessor, to be selected from a list of 15 names. The names of three clerks of county commissions and three circuit court clerks shall be submitted to the Governor by the West Virginia Association of Counties. The names of three county commissioners shall be submitted to the Governor jointly by the West Virginia Association of Counties and the West Virginia County Commissioners Association. The names of three county sheriffs shall be submitted to the Governor by the West Virginia Sheriff's Association. The names of three county assessors shall be submitted to the Governor by the Association of West Virginia Assessors;

(ii) One appointment shall be a county prosecuting attorney to be selected from a list of three names submitted by the West Virginia Prosecuting Attorneys Institute;

(iii) One appointment shall be an attorney licensed in West Virginia and in good standing as a member of the West Virginia State Bar with experience in real estate and mineral title examination, to be selected from a list of three names submitted by the State Bar; and

(iv) One appointment shall be a representative of a local historical or genealogical society.

(e) The members of the board shall serve without compensation but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as members of the board in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration. In the event the expenses are paid, or are to be paid, by a third party, the member shall not be reimbursed by the state.

(f) The staff of the board shall consist of the Director of Archives and History within the Department of Arts, Culture, and History and any additional staff as needed.

(g) The board shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code to establish a system of records management and

WV Legislature

preservation for county governments: *Provided*, That, for the retention and disposition of records of courts of record and magistrate courts, the implementation of the rule is subject to action by the Supreme Court of Appeals of West Virginia. The proposed rules shall include provisions for establishing a program of grants to county governments for making records management and preservation uniform throughout the state.

(h) In addition to the fees charged by the clerk of the county commission under the provisions of §59-1-10 of this code, the clerk shall charge and collect an additional $2 fee for every document containing less than 20 pages filed for recording and an additional $1 fee for each additional 10 pages of document filed for recording. At the end of each month, the clerk of the county commission shall deposit into the Public Records and Preservation Revenue Account as established in the State Treasury all fees collected: *Provided*, That the clerk may retain not more than 10 percent of the fees for costs associated with the collection of the fees. Clerks shall be responsible for accounting for the collection and deposit in the State Treasury of all fees collected by the clerk under the provisions of this section.

(i) There is hereby created in the State Treasury a special account entitled the Public Records and Preservation Revenue Account. The account shall consist of all fees collected under the provisions of this section, legislative appropriations, interest earned from fees, investments, gifts, grants, or contributions received by the board. Expenditures from the account shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq*. of this code and upon the fulfillment of the provisions set forth in §11B-2-1 *et seq*. of this code.

(j) Subject to the above provision, the board may expend the funds in the account to implement the provisions of this article. In expending funds from the account, the board shall allocate not more than 50 percent of the funds for grants to counties for records management, access, and preservation purposes. The board shall provide for applications, set guidelines, and establish procedures for distributing grants to counties, including a process for appealing an adverse decision on a grant application. Expenditures from the account shall be for the purposes set forth in this section, including the cost of additional staff of the Division of Archives and History.

WVLegislature

§5A-8-15a.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§5A-8-16. Assistance to legislative and judicial branches.

Upon request, the records administrator shall assist and advise in the establishment of records management programs in the legislative and judicial branches of state government and shall, as required by them, provide program services similar to those available to the executive branch of state government pursuant to the provisions of this article.

WV Legislature

§5A-8-17. Disposal of records.

(a) Except as provided in §57-1-7a of this code, no record shall be destroyed or otherwise disposed of by any agency of the state, unless it is determined by the administrator and the Director of Archives and History within the Department of Arts, Culture, and History that the record has no further administrative, legal, fiscal, research, or historical value. In the event the administrator is of the opinion that the record has no further administrative, legal, fiscal, research, or historical value, the administrator shall approve, if appropriate, a request for disposal of the records and notify both the Director of Archives and History and the agency that is the custodian of the records that they may be destroyed.

(b) The provisions of this section are not applicable to the judicial branch, the West Virginia House of Delegates, the West Virginia Senate, or the Joint Committee on Government and Finance.

WV Legislature

§5A-8-18. Destruction of nonrecord materials.

Nonrecord materials or materials not included within the definition of records as contained in this article may, if not otherwise prohibited by law, be destroyed at any time by the agency in possession of such materials without the prior approval of the administrator. The administrator may formulate procedures and interpretations to guide in the disposal of nonrecord materials.

WV Legislature

§5A-8-19. Annual report.

The administrator shall make an annual written report to the Governor for transmission to the Legislature. The report shall describe the status and progress of programs established pursuant to this article and shall include the recommendations of the administrator for improvements in the management and preservation of records in state government.

WV Legislature

§5A-8-20. Alternate storage of state records.

(a) Findings and purpose. -- The Legislature finds that continuous advances in technology have resulted and will continue to result in the development of alternate formats for the nonerasable storage of state records, and that the use of such alternative storage formats, where deemed advisable, promote the efficient and economical administration of government and provide a means for the preservation of valuable records that are subject to decay or destruction. It is the purpose of the Legislature to authorize the storage of state records in those alternate formats, as may be determined by the various branches of the government of this state, that will reasonably ensure that the originals of those records are copied into alternative formats in a manner in which the image of the original records is not erased or altered, and from which true and accurate reproductions of the original state records may be retrieved.

(b) Approved format. -- (1) In addition to those formats, processes and systems described in section ten of this article, sections seven-a and seven-c, article one, chapter fifty-seven of this code, and section twelve, article five of that chapter which are otherwise authorized for the reproduction of state records, a preservation duplicate of a state record may be stored in any approved format where the image of the original state record is preserved in a form in which the image thereof is incapable of erasure or alteration, and from which a reproduction of the stored state record may be retrieved which truly and accurately depicts the image of the original state record.

(2) As a substitute for using medium that is incapable of erasure or alteration, a preservation duplicate of a state record may be stored on other electronic storage medium or other medium capable of storing digitized documents if:

(A) The medium is stored to maximize its life by minimizing exposure to environmental contaminants;

(B) At least two copies of the preservation duplicate are made and one copy is stored in an off-site location; and

(C) A procedure is established and followed which ensures that:

(i) Modifications in the archiving process are made as technology changes so that the preservation duplicates are readily accessible, which may include migrating the preservation duplicates to different medium or different file formats; and

(ii) The medium is periodically examined to determine if the preservation duplicates remain readable and intact.

(c) Executive agency records. -- (1) The alternate formats for the storage of state records described in this section are authorized for the storage of the state records of any agency of this state. The state records administrator shall establish a procedure for executive agencies

WV Legislature

to follow implementing the provisions of subsection (b) of this section by July 1, 2013. The procedure shall include, at a minimum, the identification of examples of medium and accompanying procedures to be followed for executive agencies when making preservation duplicates of state records on medium readily available, other than microfilm or microfiche.

(2) Upon creation of a preservation duplicate from which a reproduction of the stored state record may be retrieved which truly and accurately depicts the image of the original state record, the state records administrator may destroy or otherwise dispose of the original in accordance with the provisions of section seventeen of this article for the destruction of records.

(d) Judicial records. -- (1) Except for those formats, processes and systems used for the storage of state records on the effective date of this section, no alternate format for the storage of state records described in this section is authorized for the storage of the state records of any court of this state unless the particular format has been approved by the Supreme Court of Appeals by rule. This section does not prohibit the Supreme Court of Appeals from prohibiting the use of any format, process or system used for the storage of judicial state records upon its determination that the same is not reasonably adequate to preserve the state records from destruction, alteration or decay.

(2) Upon creation of a preservation duplicate which stores an original judicial state record in an approved format from which a reproduction of the stored state record may be retrieved which truly and accurately depicts the image of the original state record, the court or the clerk thereof creating the same may, consistent with rules of the Supreme Court of Appeals, destroy or otherwise dispose of the original in accordance with the provisions of section seven, article one, chapter fifty-seven of this code for the destruction of records.

(e) Legislative records. -- In accordance with all applicable provisions of the West Virginia Constitution, the procedures for the storage and destruction of legislative records shall be determined by each house, or by a joint rule.

(f) Upon request and payment of a reasonable cost, one copy of any state record archived or preserved pursuant to the provisions of this article shall be provided to any person or entity: Provided, That the person or entity that has produced the state record may receive one copy without charge. For the purpose of this subsection "state record" means electronic record created and maintained by state agencies.

WV Legislature

§5A-8-21. Limitation on release of certain personal information maintained by state agencies and entities regarding state employees.

(a) The following personal information maintained by executive, legislative, or judicial branch agencies of the State of West Virginia regarding persons in their capacity as state officers, employees, retirees, or the legal dependents thereof is hereby deemed to be confidential and exempt from disclosure, as an unreasonable invasion of privacy, to non-governmental entities in documents otherwise subject to disclosure under the provisions of §29B-1-1 *et seq.* of this code:

(1) An individual's home address;

(2) An individual's Social Security number;

(3) An individual's credit or debit card numbers;

(4) An individual's driver's license identification number; and

(5) An individual's marital status or former legal name.

(b) It is the policy of the State of West Virginia that the information enumerated in subsection (a) of this section is personal and confidential and should only be released to non-governmental entities for such purposes as are authorized by federal law or regulation, a provision of this code, or a legislative rule promulgated pursuant to the provisions of §29A-1-1 *et seq.* of this code.

WV Legislature

§5A-8-22. Personal information maintained by state entities.

(a) The following information maintained by state executive branch agencies with respect to individuals and their dependents is personal information exempted from disclosure as an unreasonable invasion of privacy under the provisions of §29B-1-1 *et seq*. of this code, and may not be released to non-governmental entities:

(1) An individual's Social Security number; or

(2) An individual's credit or debit card number.

(b) Notwithstanding the provisions of subsection (a) of this section, the information enumerated in said subsection may be released for such purposes as are authorized by federal law or regulation, a provision of this code, or a legislative rule promulgated pursuant to the provisions of §29A-1-1 *et seq*.

WV Legislature

§5A-8-23. Limitation of liability.

This article creates no liability upon any person acting in his or her capacity as a state officer, employee, or retiree or former employee of the State of West Virginia; or upon the legal dependents, heirs and assignees of any such person; nor, upon any agency of the executive, legislative, or judicial branch of government of the State of West Virginia, for any transaction which is compromised by any third party's illegal act or inappropriate use associated with information regulated by this article.

WV Legislature

§5A-8-24. Protection of personal information relating to judicial officers, prosecutors, and law-enforcement officers.

(a) This section shall be known as Daniel's Law.

(b) This act shall be liberally construed in order to accomplish its purpose and the public policy of this state, which is to enhance the safety and security of certain public officials in the justice system, including judicial officers, prosecutors, federal and state public defenders, federal and state assistant public defenders, and law-enforcement officers, who serve or have served the citizens of West Virginia, and the immediate family members of these individuals, to foster the ability of these public servants who perform critical roles in the justice system, and to carry out their official duties without fear of personal reprisal from affected individuals related to the performance of their public functions.

(c) *Definitions*. — As used in this section:

(1) "Disclose" means to publish, publicly display, distribute, deliver, circulate, post, lend, provide, advertise, or disseminate by any means including, but not limited to, electronic transmission and on any medium including, but not limited to, the Internet.

(2) "Immediate family member" means spouse, child, parent, or any other family member related by blood or by law to the judicial officer, prosecutor, or law-enforcement officer, and who resides in the same residence as the judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, or law-enforcement officer.

(3) "Judicial officer" means the chief justice or an associate justice of the United States Supreme Court, a judge of the United States Court of Appeals, a judge of a federal district court, a magistrate judge of a federal district court, any other judge for a court established by federal law, the chief justice or a justice of the Supreme Court of Appeals of West Virginia, a circuit judge, a family law judge, a magistrate, an administrative law judge, a municipal court judge, or any other judge established by state law.

(4) "Law-enforcement officer" shall have the same definition as that term is defined in §29B-1-2 of this code.

(5) "Prosecutor" means United States Attorney or his or her assistant United States attorneys, any other prosecutor established by federal law, the Attorney General of the State of West Virginia or his or her assistant attorneys general, a county prosecuting attorney or his or her assistant prosecuting attorneys, or any other prosecutor established by state law.

(d) Unless written permission is first obtained from the individual, a state or local government agency shall not knowingly disclose, redisclose, or otherwise make available the home address or unpublished home or personal telephone number of any active, formerly active, or retired judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, or law-enforcement officer.

WV Legislature

(e) Unless written permission is first obtained from the individual, a person, business, or association shall not disclose, redisclose, or otherwise make available the home address or unpublished home or personal telephone number of any active, formerly active, or retired judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, or law-enforcement officer under circumstances in which a reasonable person would believe that providing such information would expose another to harassment or risk of harm to life or property.

(1) A civil action may be maintained by the active, formerly active, or retired judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, or law-enforcement officer, or any other person residing at the home address of the active, formerly active, or retired judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, or law-enforcement officer, for any violation of subsection (e) of this section.

(2) The court may award:

(A) Actual damages, but not less than $1,000, for each violation of this act;

(B) Punitive damages, if applicable, in accordance with §55-7-29 of this code;

(C) Reasonable attorney's fees and other litigation costs reasonably incurred; and

(D) Any other preliminary or equitable relief as the court deems appropriate.

(f) Any active, formerly active, or retired judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, or law-enforcement officer whose home address or unpublished home or personal telephone number is disclosed, redisclosed, or otherwise made available by any person, business, or association may request that the person, business, or association in violation of subsection (e) of this section that disclosed, redisclosed, or otherwise made available the information to refrain from that action and remove the information.

(g) Any immediate family member of any active, formerly active, or retired judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, or law-enforcement officer whose name, home address, or unpublished home or personal telephone number, which may be used alone or in conjunction with any other information to identify the person as the family member of an active, formerly active, or retired judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, or law-enforcement officer, is disclosed, redisclosed, or otherwise made available by any person, business, or association in violation of subsection (e) of this section may request that the person, business, or association that disclosed, redisclosed, or otherwise made available the information to refrain from that action and remove the information.

(h) A request to refrain and remove information pursuant to subsection (f) or (g) of this

WV Legislature

section shall be made in writing to the person, business, or association that disclosed, redisclosed, or otherwise made available the information.

(1) Upon receipt of a written request to refrain and remove information, the person, business, or association that disclosed, redisclosed, or otherwise made available the information shall immediately remove the information from any location where the information has been disclosed which is within the control of the person, business, or association.

(2) A civil action may be maintained by the individual whose information is disclosed, redisclosed, or otherwise made available for failure to comply with a request to refrain and remove the information made pursuant to subdivision (1) of this subsection, and the court may award injunctive or declaratory relief. If the court grants injunctive or declaratory relief, the person, business, or association responsible for the violation shall be required to pay reasonable attorney's fees and other litigation costs reasonably incurred by the judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, law-enforcement officer, or immediate family member thereof, as applicable and appropriate.

(3) A person who willfully refuses to remove information within 24 hours of receipt of the written request pursuant to subdivision (1), subsection (h) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or confined for up to six months, or both fined and confined.

(i) This section does not prohibit disclosures required by state or federal law.

WV Legislature

§5A-8-24a. Protection of Personal Residential Information of Certain Public Officials.

(a) For purposes of this section:

"Covered individual" means any person who is or was previously elected, appointed, served, or employed as a judicial officer, prosecutor, public defender, law-enforcement officer, elected official, or campaign treasurer and includes any immediate family member residing in the same household as that individual.

“Controlling agency” means the state agency, county, municipality, or political subdivision that is in possession or control of a publicly accessible website, database, or record, containing personal residential information.

“Immediate family member” means spouse, child, parent, or any other family member related by blood or by law to the covered individual, and who resides in the same residence as the covered individual.

“Judicial officer” means a justice of the United States Supreme Court, any federal judge, a justice of the Supreme Court of Appeals of West Virginia, a state circuit judge, a family court judge, a magistrate, a state or federal administrative law judge, a municipal court judge, or any other judge established by state law.

“Law-enforcement officer” has the same meaning as that term is defined in §30-29-1 of this code and includes those individuals defined as “chief executive” in §30-29-1 of this code.

"Personal residential information" means a covered individual’s home street address, personal residential telephone number, personal cellular telephone number that is not issued by an employing agency, or name when the name is associated with the home street address.

“Prosecutor” means the United States Attorney or his or her assistant United States attorneys, any other prosecutor established by federal law, the Attorney General or his or her assistant attorneys general, a county prosecuting attorney or his or her assistant prosecuting attorneys, or any other prosecutor established by state law.

“Record” means a publicly and remotely accessible website or database.

(b) If a covered individual provides a written request to the controlling agency and the covered individual identifies a specific record with personal residential information, the controlling agency shall remove or redact the covered individual’s personal residential information from the specified record and shall make reasonable efforts to remove the information from all other records within the controlling state agency.

(c) If a covered individual provides a written request to the controlling state agency to have personal residential information removed or redacted and the controlling agency fails to

WV Legislature

remove or redact the information on the specified record, the covered individual may bring a civil action for injunctive or declaratory relief. If the court grants injunctive or declaratory relief, the controlling agency responsible for the violation may be required to pay reasonable attorneys' fees and other litigation costs reasonably incurred by the covered individual, as applicable and appropriate.

(d) This section does not prohibit disclosure of personal residential information for the following:

(1) Internal government use;

(2) Disclosures required by federal law;

(3) Disclosures to a consumer reporting agency, as defined in the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*;

(4) Disclosures required pursuant to §15-12-1 of this code *et seq.*;

(5) Disclosures to local, state, or federal law-enforcement agencies;

(6) Disclosures subject to a valid subpoena or lawful discovery request;

(7) Disclosures required pursuant to §17A-2A-7 of this code;

(8) Physical documents affecting the title of real property recorded and indexed by a county;

(9) Disclosures to a title insurance company, title insurance agent, attorney, mortgage guarantee insurance company, mortgage loan originator, real estate broker, or realtor;

(10) Records associated with Uniform Commercial Code filings and financing statements;

(11) Information provided to the Secretary of State, or his or her designee, or the chief local election officers, or their designees, for the purposes of enforcing election law; and

(12) Disclosures to electoral opponents, or the local chairperson of a political party, of covered individuals for the purpose of challenging a candidate's eligibility.

(e) At the time of the written request, the covered individuals shall affirm in writing that he or she understands the redaction may cause the individual to forfeit certain legal, promotional, or official notices that otherwise would be provided but for the redaction or nondisclosure.

WV Legislature

§5A-8-25. Health care worker personal information.

(a) For purposes of this section:

"Health care worker" means a person who is an employee of a health care entity, a subcontractor, or independent contractor for a health care entity, or an employee of the subcontractor or independent contractor. The term includes, but is not limited to, a nurse, nurse's aide, laboratory technician, physician, intern, resident, physician assistant, physical therapist, any other person who provides direct patient care, first responder, or any person serving in a governance capacity of a health care entity;

"Immediate family" means a health care worker's spouse, child, or parent or any other relative who lives in the same residence as the health care worker;

"Personal information" means the home address, home telephone number, personal mobile telephone number, pager number, personal e-mail address, or a personal photograph or video of a health care worker; directions to the home of a health care worker; or photographs or videos of the home or personal vehicle of a health care worker or the immediate family of a health care worker.

(b) A health care worker may submit a written request to a state or local government official to remove personal information from records maintained by that official that are available on the internet. If a state or local government official receives such a written request, then he or she shall not knowingly make available on the internet personal information about the health care worker or the health care worker's immediate family.

(c) A health care worker's written request to a state or local government official to remove personal information from records made available on the internet shall include:

(1) Evidence that the person submitting the request is a health care worker, as defined in this section; and

(2) A statement, notarized by a notary public duly licensed under §39-4-1 *et seq*. of this code, that the person submitting the request has reason to believe that the dissemination of the personal information contained in the records that the official makes available on the internet poses an imminent and serious threat to the person's safety or the safety of the person's immediate family.

(d) Falsification of the evidence proffered to satisfy the requirements of §5A-8-25(b)(1) or §5A-8-25(b)(2) constitutes false swearing and is punishable under §61-5-2 of this code.

WV Legislature