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**OFFICE WEST VIRGINIA
SECRETARY OF STATE**

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2003



ENROLLED

House Bill No. 3009

(By Mr. Speaker, Mr. Kiss, and Delegates Varner, Amores, Browning,
Kominar, Palumbo, and Swartzmiller)



Passed March 8, 2003

In Effect from Passage

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H. B. 3009

(BY MR. SPEAKER, MR. KISS, AND DELEGATES VARNER, AMORES,
BROWNING, KOMINAR, PALUMBO AND SWARTZMILLER)

[Passed March 8, 2003; in effect from passage.]

AN ACT to amend and reenact section four, article one, chapter twenty-nine-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to excluding certain records from disclosure under the freedom of information act collected in response to and in preparation for terrorist acts or threats of terrorist acts; definitions; and exceptions.

Be it enacted by the Legislature of West Virginia:

That section four, article one, chapter twenty-nine-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PUBLIC RECORDS.

§29B-1-4. Exemptions.

- 1 (a) The following categories of information are specifically
- 2 exempt from disclosure under the provisions of this article:

3 (1) Trade secrets, as used in this section, which may
4 include, but are not limited to, any formula, plan pattern,
5 process, tool, mechanism, compound, procedure, production
6 data, or compilation of information which is not patented which
7 is known only to certain individuals within a commercial
8 concern who are using it to fabricate, produce or compound an
9 article or trade or a service or to locate minerals or other
10 substances, having commercial value, and which gives its users
11 an opportunity to obtain business advantage over competitors;

12 (2) Information of a personal nature such as that kept in a
13 personal, medical or similar file, if the public disclosure thereof
14 would constitute an unreasonable invasion of privacy, unless
15 the public interest by clear and convincing evidence requires
16 disclosure in the particular instance: *Provided*, That nothing in
17 this article shall be construed as precluding an individual from
18 inspecting or copying his or her own personal, medical or
19 similar file;

20 (3) Test questions, scoring keys and other examination data
21 used to administer a licensing examination, examination for
22 employment or academic examination;

23 (4) Records of law-enforcement agencies that deal with the
24 detection and investigation of crime and the internal records
25 and notations of such law-enforcement agencies which are
26 maintained for internal use in matters relating to law enforce-
27 ment;

28 (5) Information specifically exempted from disclosure by
29 statute;

30 (6) Records, archives, documents or manuscripts describing
31 the location of undeveloped historic, prehistoric, archaeologi-
32 cal, paleontological and battlefield sites or constituting gifts to
33 any public body upon which the donor has attached restrictions

34 on usage or the handling of which could irreparably damage
35 such record, archive, document or manuscript;

36 (7) Information contained in or related to examination,
37 operating or condition reports prepared by, or on behalf of, or
38 for the use of any agency responsible for the regulation or
39 supervision of financial institutions, except those reports which
40 are by law required to be published in newspapers;

41 (8) Internal memoranda or letters received or prepared by
42 any public body;

43 (9) Records assembled, prepared or maintained to prevent,
44 mitigate or respond to terrorist acts or the threat of terrorist acts,
45 the public disclosure of which threaten the public safety or the
46 public health;

47 (10) Those portions of records containing specific or unique
48 vulnerability assessments or specific or unique response plans,
49 data, databases, and inventories goods or materials collected or
50 assembled to respond to terrorist acts; and communication
51 codes or deployment plans of law enforcement or emergency
52 response personnel;

53 (11) Specific intelligence information and specific investi-
54 gative records dealing with terrorist acts or the threat of a
55 terrorist act shared by and between federal and international
56 law-enforcement agencies, state and local law enforcement and
57 other agencies within the department of military affairs and
58 public safety;

59 (12) National security records classified under federal
60 executive order and not subject to public disclosure under
61 federal law that are shared by federal agencies, and other
62 records related to national security briefings to assist state and
63 local government with domestic preparedness for acts of
64 terrorism;

65 (13) Computing, telecommunications and network security
66 records, passwords, security codes or programs used to respond
67 to or plan against acts of terrorism which may be the subject of
68 a terrorist act;

69 (14) Security or disaster recovery plans, risk assessments,
70 tests, or the results of those tests;

71 (15) Architectural or infrastructure designs, maps or other
72 records that show the location or layout of the facilities where
73 computing, telecommunications or network infrastructure used
74 to plan against or respond to terrorism are located or planned to
75 be located; and

76 (16) Codes for facility security systems; or codes for secure
77 applications for such facilities referred to in subdivision (15),
78 subsection (a) of this section.

79 (b) As used in subdivisions (9) through (16), subsection (a)
80 of this section, the term “terrorist act” means an act that is
81 likely to result in serious bodily injury or damage to property or
82 the environment and is intended to:

83 (1) Intimidate or coerce the civilian population;

84 (2) Influence the policy of a branch or level of government
85 by intimidation or coercion;

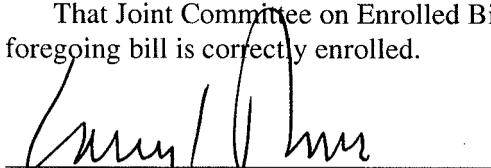
86 (3) Affect the conduct of a branch or level of government
87 by intimidation or coercion; or

88 (4) Retaliate against a branch or level of government for a
89 policy or conduct of the government.

90 (c) Nothing in the provisions of subdivision (9) through
91 (16), subsection (a) of this section, should be construed to make
92 subject to the provisions of this chapter any evidence of an

93 immediate threat to public health or safety unrelated to a
94 terrorist act or the threat thereof which comes to the attention
95 of a public entity in the course of conducting a vulnerability
96 assessment response or similar activity.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



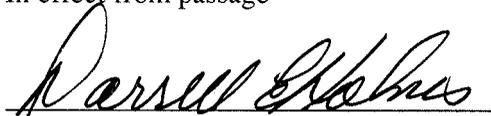
Chairman Senate Committee



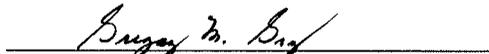
Chairman House Committee

Originating in the House.

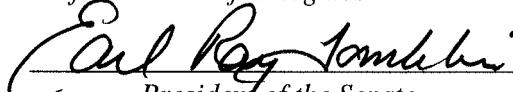
In effect from passage



Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 27th
day of March 2003.



Governor

PRESENTED TO THE
GOVERNOR

Date 3/24/03

Time 10:35h