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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2009



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 2418**

(By Delegates Perry, Boggs, Morgan and Ellem)



Passed April 10, 2009

In Effect Ninety Days from Passage

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H. B. 2418

(BY DELEGATES PERRY, BOGGS, MORGAN AND ELLEM)

[Passed April 10, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §29B-1-4 of the Code of West Virginia, 1931, as amended, relating to granting exemptions from disclosure under the Freedom of Information Act for certain information retained by the Division of Corrections and the Regional Jail Authority.

Be it enacted by the Legislature of West Virginia:

That §29B-1-4 of the Code of West Virginia, 1931, 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
7 which is known only to certain individuals within a
8 commercial concern who are using it to fabricate, produce or
9 compound an article or trade or a service or to locate
10 minerals or other substances, having commercial value, and
11 which gives its users an opportunity to obtain business
12 advantage over competitors;

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

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

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

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

31 (6) Records, archives, documents or manuscripts
32 describing the location of undeveloped historic, prehistoric,
33 archaeological, paleontological and battlefield sites or
34 constituting gifts to any public body upon which the donor
35 has attached restrictions on usage or the handling of which
36 could irreparably damage such record, archive, document or
37 manuscript;

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

43 (8) Internal memoranda or letters received or prepared by
44 any public body;

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

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

55 (11) Specific intelligence information and specific
56 investigative records dealing with terrorist acts or the threat
57 of a terrorist act shared by and between federal and
58 international law-enforcement agencies, state and local law
59 enforcement and other agencies within the Department of
60 Military Affairs and Public Safety;

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

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

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

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

78 (16) Codes for facility security systems; or codes for
79 secure applications for such facilities referred to in
80 subdivision (15) of this subsection;

81 (17) Specific engineering plans and descriptions of
82 existing public utility plants and equipment;

83 (18) Customer proprietary network information of other
84 telecommunications carriers, equipment manufacturers and
85 individual customers, consistent with 47 U.S.C. §222; and

86 (19) Records of the Division of Corrections and the
87 Regional Jail Authority relating to design of corrections and
88 jail facilities owned or operated by the agency, and the policy
89 directives and operational procedures of personnel relating to
90 the safe and secure management of inmates, that if released,
91 could be utilized by an inmate to escape a corrections or jails
92 facility, or to cause injury to another inmate or to facility
93 personnel.

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

98 (1) Intimidate or coerce the civilian population;

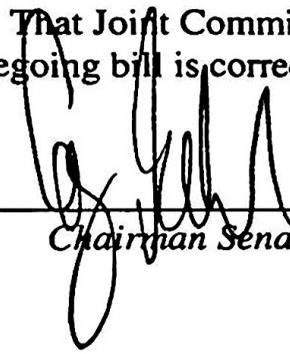
99 (2) Influence the policy of a branch or level of
100 government by intimidation or coercion;

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

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

105 (c) Nothing in the provisions of subdivisions (9) through
106 (16), inclusive, subsection (a) of this section should be
107 construed to make subject to the provisions of this chapter
108 any evidence of an immediate threat to public health or safety
109 unrelated to a terrorist act or the threat thereof which comes
110 to the attention of a public entity in the course of conducting
111 a vulnerability assessment response or similar activity.

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



Chairman Senate Committee



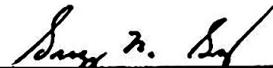
Chairman House Committee

Originating in the House.

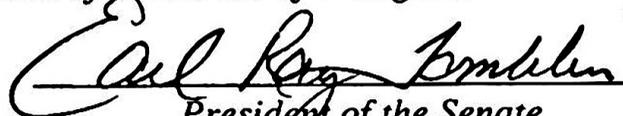
In effect ninety days from passage.



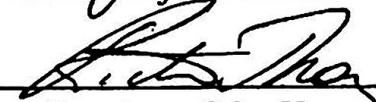
Clerk of the Senate



Clerk of the House of Delegates

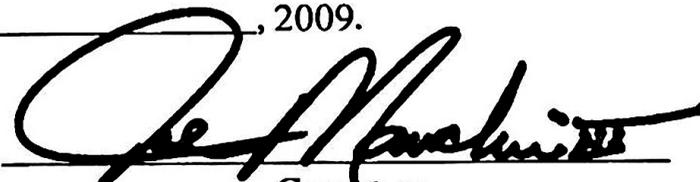


President of the Senate



Speaker of the House of Delegates

The within is approved this the 24th
day of April, 2009.



Governor

PRESENTED TO THE
GOVERNOR

APR 21 2009

Time 4.00 pm