

Senate Bill No. 89

(By Senators Laird, Barnes, Yost, Hall, Foster, Klempa, and
Plymale)

[Introduced January 13, 2011; referred to the Committee on Health
and Human Resources; and then to the Committee on the Judiciary.]

**Interim
Bill**

A BILL to amend and reenact §29B-1-4 of the Code of West Virginia,
1931, as amended, relating to including certain records of the
Division of Juvenile Services in the exemptions from
disclosure under the Freedom of Information Act.

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.

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

(1) Trade secrets, as used in this section, which may include,
but are not limited to, any formula, plan pattern, process, tool,
mechanism, compound, procedure, production data or compilation of

1 information which is not patented which is known only to certain
2 individuals within a commercial concern who are using it to
3 fabricate, produce or compound an article or trade or a service or
4 to locate minerals or other substances, having commercial value,
5 and which gives its users an opportunity to obtain business
6 advantage over competitors;

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

15 (3) Test questions, scoring keys and other examination data
16 used to administer a licensing examination, examination for
17 employment or academic examination;

18 (4) Records of law-enforcement agencies that deal with the
19 detection and investigation of crime and the internal records and
20 notations of such law-enforcement agencies which are maintained for
21 internal use in matters relating to law enforcement;

22 (5) Information specifically exempted from disclosure by
23 statute;

24 (6) Records, archives, documents or manuscripts describing the

1 location of undeveloped historic, prehistoric, archaeological,
2 paleontological and battlefield sites or constituting gifts to any
3 public body upon which the donor has attached restrictions on usage
4 or the handling of which could irreparably damage such record,
5 archive, document or manuscript;

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

11 (8) Internal memoranda or letters received or prepared by any
12 public body;

13 (9) Records assembled, prepared or maintained to prevent,
14 mitigate or respond to terrorist acts or the threat of terrorist
15 acts, the public disclosure of which threaten the public safety or
16 the public health;

17 (10) Those portions of records containing specific or unique
18 vulnerability assessments or specific or unique response plans,
19 data, databases and inventories of goods or materials collected or
20 assembled to respond to terrorist acts; and communication codes or
21 deployment plans of law enforcement or emergency response
22 personnel;

23 (11) Specific intelligence information and specific
24 investigative records dealing with terrorist acts or the threat of

1 a terrorist act shared by and between federal and international
2 law-enforcement agencies, state and local law enforcement and other
3 agencies within the Department of Military Affairs and Public
4 Safety;

5 (12) National security records classified under federal
6 executive order and not subject to public disclosure under federal
7 law that are shared by federal agencies and other records related
8 to national security briefings to assist state and local government
9 with domestic preparedness for acts of terrorism;

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

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

16 (15) Architectural or infrastructure designs, maps or other
17 records that show the location or layout of the facilities where
18 computing, telecommunications or network infrastructure used to
19 plan against or respond to terrorism are located or planned to be
20 located;

21 (16) Codes for facility security systems; or codes for secure
22 applications for such facilities referred to in subdivision (15) of
23 this subsection;

24 (17) Specific engineering plans and descriptions of existing

1 public utility plants and equipment;

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

5 (19) Records of the Division of Corrections, ~~and the~~ Regional
6 Jail Authority and the Division of Juvenile Services relating to
7 design of corrections, ~~and jail~~ and detention facilities owned or
8 operated by the agency, and the policy directives and operational
9 procedures of personnel relating to the safe and secure management
10 of inmates or residents, that if released, could be utilized by an
11 inmate or resident to escape a ~~corrections or jails~~ facility, or to
12 cause injury to another inmate, resident or to facility personnel.

13 (b) As used in subdivisions (9) through (16), inclusive,
14 subsection (a) of this section, the term "terrorist act" means an
15 act that is likely to result in serious bodily injury or damage to
16 property or the environment and is intended to:

17 (1) Intimidate or coerce the civilian population;

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

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

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

24 (c) Nothing in the provisions of subdivisions (9) through

1 (16), inclusive, subsection (a) of this section should be construed
2 to make subject to the provisions of this chapter any evidence of
3 an immediate threat to public health or safety unrelated to a
4 terrorist act or the threat thereof which comes to the attention of
5 a public entity in the course of conducting a vulnerability
6 assessment response or similar activity.

NOTE: The purpose of this bill is to include certain records of the Division of Juvenile Services in the exemptions from Freedom of Information Act requests.

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

This bill was recommended for introduction and passage during the 2011 Regular Session of the Legislature by the Legislative Oversight Committee on Regional Jail and Correctional Facility Authority.