

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 2800**

(BY DELEGATES MILLER, FERRO, SOBONYA, BORDER,  
ROHRBACH, FOLK, AND ELDRIDGE)

[Passed March 3, 2016; in effect ninety days from passage.]



1 AN ACT to amend and reenact §29B-1-2 and §29B-1-4 of the Code of West Virginia, 1931, as  
2 amended, all relating to law-enforcement officers' personal information; defining terms;  
3 and adding personal information of law-enforcement officers and certain family members  
4 of law-enforcement officers maintained by the public body in the ordinary course of the  
5 employer-employee relationship to the list of exemptions from public records requests.

*Be it enacted by the Legislature of West Virginia:*

1 That §29B-1-2 and §29B-1-4 of the Code of West Virginia, 1931, as amended, be  
2 amended and reenacted, all to read as follows:

**ARTICLE 1. PUBLIC RECORDS.**

**§29B-1-2. Definitions.**

1 As used in this article:

2 (1) "Custodian" means the elected or appointed official charged with administering a public  
3 body.

4 (2) "Law-enforcement officer" shall have the same definition as this term is defined in  
5 W.Va. Code §30-29-1: *Provided*, That for purposes of this article, "law-enforcement officer" shall  
6 additionally include those individuals defined as "chief executive" in W.Va. Code §30-29-1.

7 (3) "Person" includes any natural person, corporation, partnership, firm or association.

8 (4) "Public body" means every state officer, agency, department, including the executive,  
9 legislative and judicial departments, division, bureau, board and commission; every county and  
10 city governing body, school district, special district, municipal corporation, and any board,  
11 department, commission council or agency thereof; and any other body which is created by state  
12 or local authority or which is primarily funded by the state or local authority.

13 (5) "Public record" includes any writing containing information prepared or received by a  
14 public body, the content or context of which, judged either by content or context, relates to the  
15 conduct of the public's business.

16 (6) "Writing" includes any books, papers, maps, photographs, cards, tapes, recordings or  
17 other documentary materials regardless of physical form or characteristics.

**§29B-1-4. Exemptions.**

1 (a) There is a presumption of public accessibility to all public records, subject only to the  
2 following categories of information which are specifically exempt from disclosure under the  
3 provisions of this article:

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

10 (2) Information of a personal nature such as that kept in a personal, medical or similar file,  
11 if the public disclosure of the information would constitute an unreasonable invasion of privacy,  
12 unless the public interest by clear and convincing evidence requires disclosure in this particular  
13 instance: *Provided*, That this article does not preclude an individual from inspecting or copying  
14 his or her own personal, medical or similar file;

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

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

20 (5) Information specifically exempted from disclosure by statute;

21 (6) Records, archives, documents or manuscripts describing the location of undeveloped  
22 historic, prehistoric, archaeological, paleontological and battlefield sites or constituting gifts to any  
23 public body upon which the donor has attached restrictions on usage or the handling of which  
24 could irreparably damage the record, archive, document or manuscript;

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

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

30           (9) Records assembled, prepared or maintained to prevent, mitigate or respond to terrorist  
31 acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the  
32 public health;

33           (10) Those portions of records containing specific or unique vulnerability assessments or  
34 specific or unique response plans, data, databases and inventories of goods or materials collected  
35 or assembled to respond to terrorist acts; and communication codes or deployment plans of  
36 law-enforcement or emergency response personnel;

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

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

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

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

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

53 (16) Codes for facility security systems; or codes for secure applications for facilities  
54 referred to in subdivision (15) of this subsection;

55 (17) Specific engineering plans and descriptions of existing public utility plants and  
56 equipment;

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

59 (19) Records of the Division of Corrections, Regional Jail and Correctional Facility  
60 Authority and the Division of Juvenile Services relating to design of corrections, jail and detention  
61 facilities owned or operated by the agency, and the policy directives and operational procedures  
62 of personnel relating to the safe and secure management of inmates or residents, that if released,  
63 could be used by an inmate or resident to escape a facility, or to cause injury to another inmate,  
64 resident or to facility personnel ;

65 (20) Information related to applications under section four, article seven, chapter sixty-one  
66 of this code, including applications, supporting documents, permits, renewals, or any other  
67 information that would identify an applicant for or holder of a concealed weapon permit: *Provided:*  
68 That information in the aggregate that does not identify any permit holder other than by county or  
69 municipality is not exempted: *Provided, however,* That information or other records exempted  
70 under this subdivision may be disclosed to a law enforcement agency or officer: (i) to determine  
71 the validity of a permit, (ii) to assist in a criminal investigation or prosecution, or (iii) for other lawful  
72 law-enforcement purposes; and

73 (21) Personal information of law-enforcement officers maintained by the public body in the  
74 ordinary course of the employer-employee relationship. As used in this paragraph, "personal  
75 information" means a law-enforcement officer's social security number, health information, home

76 address, personal address, personal telephone numbers and personal email addresses and those  
77 of his or her spouse, parents and children as well as the names of the law-enforcement officer's  
78 spouse, parents and children.

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

- 82 (1) Intimidate or coerce the civilian population;
- 83 (2) Influence the policy of a branch or level of government by intimidation or coercion;
- 84 (3) Affect the conduct of a branch or level of government by intimidation or coercion; or
- 85 (4) Retaliate against a branch or level of government for a policy or conduct of the  
86 government.

87 (c) The provisions of subdivisions (9) through (16), inclusive, subsection (a) of this section  
88 do not make subject to the provisions of this chapter any evidence of an immediate threat to public  
89 health or safety unrelated to a terrorist act or the threat of a terrorist act which comes to the  
90 attention of a public entity in the course of conducting a vulnerability assessment response or  
91 similar activity.





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

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2016.

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*Governor*